

Arum Shourie

RELIGION
IN
POLITICS

'Religion' in the sense understood by the great teachers—the Buddha, Jesus Christ, Mahatma Gandhi—is a powerful spiritual force that awakens us to love and compassion, but the organised 'religion' of the priest and the Book is a vehicle of violence and an instrument of domination. It is the self-serving distortions of the cleric and the politician which concern Arun Shourie in this collection of essays. Each article was written in response to actual happenings in recent history: from the eventful political twists and turns in the Punjab and in Assam, to the debate sparked off by the Shah Bano case on Muslim personal law. But while the occasions are diverse, the theme is common, as well as the perspective in which the events are viewed.

With the incisive grasp of particulars, historic sweep and scholarly analysis that characterise Arun Shourie's writings, these essays seek to demolish long-entrenched prejudices and sketch a secular and humanist alternative. Some of the critiques contained in this volume have already created a storm of controversy. But as the dragon's teeth so thoughtlessly sowed in India's political soil continue to yield their bitter crop of communal and secessionist strife, the profound significance of Shourie's insights will become all the more apparent. A book for thoughtful Indians of all faiths to ponder.



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Religion in Politics

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Arun Shourie



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*For my friends
Ajit, Javed, Jean,
Siddhartha and Vikram
who have helped in so many ways*



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Preface

Religion in the sense in which the Buddha used the word *Dhamma*—the Middle Way, ‘mindfulness’—puts one at peace with oneself and with others. Thus it cannot but bring us together. ‘Religion’ in the sense in which Gandhiji used the word—in the sense of righteous conduct, of caring for and serving one’s fellow men, especially those who can do nothing for us in return—can only ennoble our public life. ‘Religion’ in the sense in which people practise it in their day to day lives too cannot set us at one another’s throats—for such ‘religion’ cuts across the texts, the prophets and the churches. People in a village often invoke the same local deity for water, beseech the same saint for a favour, wear amulets from the same *dargah* to ward off misfortune. They resort to the same beliefs to cope with primordial afflictions—suffering, privation, injustice. Better knowledge of this ‘religion’ can only awaken us to the human-ness that is common to all of us—it can only teach us that ‘they’ are not different from ‘us’, that all of us are trying to cope with the same afflictions, and that, in doing so, all of us are falling back on the same soporifics.

But organised ‘religion’—the ‘religion’ of the Book, of the church, the ‘religion’ that the politician stokes—is an altogether different thing. It is an instrument of domination, a device—and nothing but that—in the pursuit of power, and nothing but power. This book deals with ‘religion’ in this sense.

The induction of ‘religion’ in this sense into our public life has once again poisoned the air. It has once again become the fuel for violence and secession. These essays list the marks by which we may recognise the perversion; they portray the consequences of inflaming the people with ‘religion’ in this sense, and they sketch the secular and humanist alternative.

Each essay was written as the event occurred. But each uses the event merely as the occasion to draw attention to deeper currents that have caused it, to calamities it portends. Most of all, it uses the event to draw attention to the basic things that need to be done beyond putting out the immediate fire, to draw attention to the very perceptions that must be altered.

The 'news-pegs' thus differ. The essays on Jinnah and the recent events in Punjab deal with movements in which the leaders consciously stoked 'religion' to recruit and inflame followers; the essays on Assam on the other hand, deal with a situation in which the leaders of the movement were trying their best to keep 'religion' out but in which the politicians—specially at the Centre—used 'religion' to divide the people and to discredit the movement. Some essays portray occasions when 'religion' was deployed from the beginning, others deal with occasions when 'religion' came in later and made things infinitely worse. The debate on the Shah Bano case was consciously manipulated by religious fundamentalists from the outset. By contrast, the killings that followed Mrs Gandhi's assassination were not communal to start with but they were appropriated by the Hindus *ex post*.

While the news-pegs differ, the essays are inter-related. An idea mentioned in one is developed in another. Moreover, the concerns, the ways of looking at things are common to them all.

The volume forms part of the Peace and Global Transformation Project of the United Nations University. The project aims, among other things, to study how the State and people's movements can end up exacerbating problems of violence, human rights and cultural identities, and to identify how institutions, mores, movements can be transformed so that they may alleviate the problems. It focuses, in particular, on the points that constitute the greatest danger—in both the intensity and the frequency of the crises they generate—but which also embody the greatest potential for effective intervention.

The project has allowed me to continue to work in great freedom and also to discuss these problems with a wide range of scholars and activists in India. I was enabled to participate in the project by the kindly interest of Soedjatmoko, the Rector of the UNU, and Rajni Kothari, one of the principal conceptualizers of the project. I am indebted to them for their concern as much as for the freedom in which I have been able to pursue these enquiries. As the reader would expect, I alone am responsible for the results.

CHAPTER I

On Taking Offence

ACHIMAERA, in Greek mythology, was a monster with a lion's head, a goat's trunk, and a serpent's tail; more generally it meant a composite animal. Throughout the ages, painters and writers of fantastic tales have been fond of creating chimaeras. My own favourite brain-child is the momiphanth. He is a phenomenon most of us have met in life: a hybrid who combines the delicate frailness of the mimosa, crumbling at a touch when his own feelings are hurt, with the thick-skinned robustness of the elephant trampling over the feelings of others....

Arthur Koestler¹

'You Hindus have no respect for our Gurus. Don't you remember what your Dayanand said about Guru Nanak? He used to abuse him left, right and centre.'

We hear something like this every second day today—'Your Dayanand called Guru Nanak a *dambhi* (illiterate),' 'Your Jadunath Sarkar called Guru Gobind Singh a *shahi lutera*.'

Question after question leaps to mind. Have you read what Swami Dayanand, or Jadunath Sarkar for that matter, actually wrote? I have yet to come across a person who, though he has internalised the allegation, has actually taken the trouble to read *Satyarthprakash*.

Even if we assume that Swami Dayanand called Guru Nanak a '*dambhi*,' what did he mean by the term? Could the meaning just be, 'Guru Nanak claimed to speak on the authority of the Vedas, but he had not read them, he *could* not have read them, as he did not know Sanskrit'—an assertion which, howsoever vehemently others may have protested against it, Guru Nanak would have dismissed as irrelevant.

But even if Dayanand had meant something stronger by the term, should we at once take offence? Did Dayanand single out the great and gentle Nanak for such treatment? Quite the contrary. He used much, much harsher language in characterising Hindu sects and saints. Nor did he spare the deities. Indeed, his mission started with a question whose audacity would be enough to ridicule the belief of millions—'If this *Shivling* cannot protect itself against a common rat,' the young child asked himself on that *Shivratri*, 'how is it going to help me?'

Do not all reformers ask such audacious questions? Do not almost all of them speak with equal bluntness? Even the gentle Jesus calls others 'you hypocrites', 'you blind guides', 'you blind fools', 'you blind men', 'you serpents', 'you brood of vipers'. 'You are like whitewashed tombs,' he tells them, 'which outwardly appear beautiful, but within are full of dead men's bones and all uncleanness.'²

The language of the Gurus too is simple, direct. That is precisely why it is so effective. If the Brahmin is so special, we are asked in the Granth Sahib, why does he not emerge from some other, some special part of the Brahmini? May the Brahmin not take offence on the ground that his mother's vagina is being brought in just to score a debating point? 'Shift your feet,' the devout Muslim tells Guru Nanak. 'You are sleeping with them pointing towards the *Kaaba*.' 'Shift them, my friend,' the Guru says, 'to the direction where God is not.' May the Muslim not take offence on the ground that the Guru is refusing to accord the *Kaaba* the special status that the Prophet enjoined, that he is placing it no higher than any other place in the world? The Granth Sahib invokes the authority of the Vedas hundreds of times. Its central concept—the *Akaal Purush*, the timeless One, the One without beginning or end, the One without form or attributes—is indistinguishable from the Vedantic *Brahma*. But Swami Dayanand cites the verse, 'Even *Brahma* who constantly read the Vedas died. All the four Vedas are mere fiction. The Vedas can never realise the

greatness of a Sadhu.' In a sense, the verse is entirely in consonance with Vedanta—the Upanishads affirm again and again that the Book, howsoever holy, is just a ladder that is to be discarded once one has realised the truth. But given the way we react to his statements without reading them, is it altogether surprising that Dayanand flies into a rage over such verses and takes them as evidence of Guru Nanak being a *naastik*, a reviler of the Vedas?³ And how should Hindus react to the unambiguous declaration of the Granth Sahib—'Turki Kaane, Hindu Anne', 'The Muslims are one-eyed, the Hindus blind'? Does it not offend? Can it not incite the faithful?

Guru Nanak condemns the Jains roundly. He accuses them of remaining filthy day and night, of drinking water full of filth, of eating left-overs. 'They spread out their excreta,' he says, 'and take into their mouths the stench. It is water they dread...' 'They bring shame upon their parents,' he says, 'Their children weep and run after them.' He admonishes them for not offering oblations to the dead, for being niggardly towards guests, for not performing funeral rites, for not lighting lamps. Where will such persons go after death, he wonders. 'They are not yogis,' he declares, 'nor Shaivite monks, nor *qazis*, nor *mullas*. They are the ones damned by God. They wander about as damned...' If they get their hair pulled out, as he says they do, if they do not bathe, as he says they do not, 'let dust be thrown on their heads a hundred times.'⁴ May the Jains not object to a portrayal such as this?

Millions worship Durga or Kali. The Granth Sahib, however, portrays them as ones who have forgotten the name of God, who have forsaken prayer, and it says of them:

A *Shakta* is like the son of a prostitute who knows not his father's name.

Without prayer a man goes about like a dog,

He is full of lies, his face is blackened.

Without prayer men carry loads on their heads

As cattle *Shaktas* carry the weight of horns on their heads.

Without prayer they are driven away like dogs.

So do greedy *Shaktas* find no one to solace them.

Man without prayer destroys himself

The wretched *Shakta* has no family or caste....⁵

'Like the son of a prostitute who knows not his father's name', 'driven

away like dogs', 'wretched', 'without family or caste'—strong words, more than a match for anything Dayanand ever used, and these are the words of two gentle teachers, Guru Nanak and Guru Arjun Dev.

But let us assume that Swami Dayanand was the only one who used blunt words. Should we focus on this trait of his or on *the general character of his work*? For instance, in his mighty crusade against idolatry, in his crusade to simplify ritual, was he not closer to the teachings of the Gurus than, say, the practice of the average Sikh as much as of the average Hindu today?

Even if Swami Dayanand's practice had not been as close to the teachings of the Gurus as in fact it was, even if he had actually abused the Gurus, even if he had not just abused them but had singled them out for abuse, should we take offence? Does abuse tarnish the sun?

And why do we hold *all* Hindus responsible for what *one* reformer—who spoke as harshly about them—said? How are these words of one reformer more significant, how are they more representative of the Hindus' attitude to the Sikh Gurus than the fact that lakhs and lakhs of Hindus revere the Gurus and the Granth Sahib as much as the Sikhs?

And how long will we retain this thorn in our hearts? Should there not be the equivalent of a Statute of Limitations here?

And what is the precise atonement that will remove our grudge? Or is it that because one Hindu reformer used some distasteful expressions a hundred years ago, we are sworn to hostility against all Hindus for ever, and there is nothing they can do to convince us of the contrary?

Beyond Words

THE PROBLEM, in fact, transcends the specific words that a reformer or a sacred text has used. Even if we agree to purge history as well as the texts of such words, what will we do about the teaching—the central doctrine, the propositions—that the reformers and the texts urge? Idols are revered by millions. And yet we know the sort of words that the Quran uses about idols and idolators, the curses it pronounces on them, the duty it enjoins on the faithful—the duty of ensuring 'a wide slaughter in the land' of the infidels. Surely this is more than just using harsh words against someone. It is more than intimidation. It is incitement to murder, and wholesale murder at that. Is the

Hindu to take offence and demand that the Quran be purged of such passages?

Or consider the figure of Jesus. The Quran recognises him as one of the prophets. But it repeatedly asserts that Jesus was *not* the Son of God. It also says, for instance, that the one who was crucified was *not* Jesus but a look-alike. Now, these assertions strike at two notions that are absolutely central to the faith of Christians. Should they take offence and demand that the Quran be purged of these verses? And if *they* ask for this, would *they*, in turn, not be striking at a premise that is just as fundamental to the faith of a Muslim as the divinity of Jesus is to that of a Christian, the premise, namely, that every word of the Quran—including, that is, every word asking us to launch *fiyahs*, every word denying the divinity of Jesus—is true, that it is of divine origin?

At one stage some Hindu researchers began representing *Rishabha*, the first Tirthankara of the Jains, as an *avatar* of Vishnu. The Jains took this to be an attempt to swallow Jainism. They retaliated by questioning the divine status of Vishnu himself, and they did so by drawing special attention to what, by the standards that had become current, could only be regarded as the ‘immoral’ behaviour of the *avatars*. They went so far as to produce new versions of the Ramayana and the Mahabharata, in which the gods revered by the Hindus—Rama, Krishna—were represented as worldly Jain heroes whose deeds were to be weighed by the norms of Jain ethics. Rama survives the change. He does not kill Ravana—Lakshmana does that—and so is still reborn in heaven because of his strict adherence to *ahimsa*. But Krishna suffers. As a scholar notes, his deeds of ‘treachery and violence’ are too numerous to be covered up. After his time on earth, therefore, he is depicted as spending a long, long time in hell.⁶ Should the Jains forever hold against the Hindus the latter’s attempt to ‘misrepresent’ *their* Tirthankara as an *avatar* of Vishnu? Should the Hindus forever hold the Jains guilty of ‘distorting’ their epics and vilifying *their* god, Krishna?

Roots

ONE SOURCE of the problem, of course, is that all of us are Koestler’s momiphants. We harp on what the *other* man’s Guru or scripture says about *our* Guru or scripture, but conveniently forget what *our*

Guru and scripture say about persons, texts, beliefs that the *other* holds sacred.

But there is more. For one thing, if a person who happens to be from another religion shows us up, we are much more liable to pounce on him than if a person from our own religion says the same thing. It isn't just the thing said that matters. Moreover, there is racialism in our reaction. Gandhiji used to point to the asymmetry in the reaction of the Hindus to the slaughter of cows: how upset you get about the slaughter of cows by Muslims, he told them, but you say nothing of the slaughter that takes place daily on behalf of Englishmen.⁷ The Muslims react in exactly the same way. Consider Rodinson's widely read *Mohammed*. The Penguin edition is available in bookshops across the country. It relates the teachings of the Prophet to the socio-economic circumstances of the day, as well as to the personal predicaments and desires of the Prophet. Its central thesis is that Mohammed was an exceptional man, but one whose career and teaching is best understood when we see him as a person establishing a State rather than as a person who has any special relationship with God. Rodinson portrays the exhortations contained in the Quran as being not revelations from Allah but as mere promptings from the unconscious, and convenient promptings at that. He repeatedly draws attention to the sequence that precedes the revelation: the Prophet or his group faces a predicament; the predicament plunges the Prophet into intense inner turmoil; a revelation dawns in which Allah says the precise thing that resolves the predicament in the way most convenient to the Prophet and his dedicated band. For the faithful the sequence is proof of the special concern that God quite understandably had for His Messenger. But for Rodinson the sequence suggests that the exhortations are not 'revelations' but 'simply fresh associations produced by the unconscious working on things which have been seen and heard but forgotten.' The resulting 'ideology', he says, in a typical passage, 'was... built up from elements imposed on a man by his own situation and adopted by a society by reason of its situation.'⁸

In a typical passage he writes, 'It is unlikely that he [the Prophet] felt for Khadija [his first wife who was fifteen years older than him] the physical passion which was later to procure him, in his old age, the young and lovely women of his future harem.' He writes of the jealousies among the Prophet's wives, of their collective jealousy of the Coptic concubine, Mariya, of Fatima's for her step-mother, Aisha, of the

Prophet's marriages and the circumstances—among which was often the helpful revelation—in which each was contracted. He writes about the Prophet's 'amorous proclivities later on in life', of 'the troubles of a man mocked for his lack of male heirs, the frustration of a highly sexed man whose own moral conscience prevented him from realising his desires, the suppressed fury of a man fundamentally sure of himself, but treated with contempt by practical politicians...' He writes of 'a certain pathological element in his make up'. He dilates on the nature of The Voice that the Prophet heard. He talks of the Prophet 'consummating the [tenth] marriage [to Maymuna] with his usual precipitancy, at the first halt'. He spells out at length how, upon arriving at Medina, when he needed the help of the influential Jewish tribes there, the Prophet first ordained that the faithful adopt the Jewish times of prayer, the Jewish fasts, etc., that while praying they bow not towards the *Kaaba* but towards Jerusalem and so on, and how later, once his power had been consolidated, he turned on them and had hundreds of them massacred.⁹

For the devout Muslim the style of the Quran is unparalleled. Indeed, the unequalled excellence and majesty of the verses is taken as proof of its divine origin. But Rodinson says quite casually that the style is typical of the styles of the *Kahins*—the soothsayers—of the day, that the style of the later revelations deteriorated and that it is only the piety of the faithful that leads them to regard it so highly.¹⁰

Here then is what we find in a standard biography.¹¹ It is available in bookshops all across the country, it is read widely. But you can imagine what would have happened if a brown man, in particular a Hindu, had written anything of the kind—abuse, threats, demands that the book be banned, perhaps a few riots too would have dogged its heels.

The Book

THE NEXT source of the difficulty lies in our not comprehending, in our reluctance to acknowledge, most of all to ourselves, the nature of the texts we revere. In our defensive militancy we insist that The Book is true, that it is excellent, that every word of it is vital, as well as true and excellent, and that it is true and excellent forever.

But in many ways the Books, when they were composed, were

hold-alls. Whatever was thought to be valuable at that time was put into them—we thus have medicinal prescriptions, laws to govern inter-personal relations, rules of taxation and inheritance, chants, prayers, chronicles of kings, accounts of places through which the people passed and so on. The only reason many of these things figure in The Book is simply that The Book itself was a hold-all. The Old Testament is full of who slept with whom, who killed whom. None of it has any moral that is of such importance for all eternity that God should have enshrined it in The One Book He was transmitting to us. The fact simply is that at that time The Book was one of the few books around. So the compilers put everything in it—fables, history, morals, law. Today we would put the facts of history in one book, propositions and arguments of ethics in another, provisions of law in a third. And we would not hesitate to revise any one of them as new facts became available or as our norms and opinions changed. We wouldn't feel that we were doing something extraordinary, to say nothing of doing something sacrilegious when we analysed any one of them, picked holes in them, or altered and overhauled them.

But that is not how it was two thousand or a thousand years ago. As a consequence, each advance of knowledge that contradicts a proposition contained in The Book jars us, the attempt of a scholar to examine the text with the tools of critical analysis—tools that we would find perfectly serviceable, were the subject something other than The Book—strikes us as an affront, as a deliberate attempt to denigrate our religion.

Changing Mores

TWO FACTORS, specially when they appear together—as they do, for instance, in the case of Islam—complicate the matter further. The first is the special position of the founders and prophets of the religion. These great men exercised an overwhelming, a hypnotic influence over their followers. When he was alive and the slightest doubt arose about what should be done, the followers would rush to the teacher, the prophet, to seek his counsel. When he was gone, it was entirely natural for the followers to recall what he had done in the same or an analogous situation, or to ask what he would have done had he been faced with it now.

What he did or said on small matters as much as on the great ones—on whether we should slaughter the infidels as much as on whether one should have more than one wife, whether one should bed more than one of them in one night, whether one must wash oneself after each intercourse—is therefore set down at great length and with great piety in texts which we have come to regard as sacred. In the Prophet's case, for instance, the words and deeds are set down in the *hadis* collections.

But our ways of looking at things have changed as much since the days of the Prophet as of Moses. What seemed natural and proper then seems an embarrassment today. Therefore if someone so much as reproduces what is written in these texts on a subject—in fact, if he so much as enumerates the kinds of subjects which are dealt with in the texts—we are apt to fly into a rage.

Today monogamy is the norm. In times gone by there was nothing exceptional in having many wives, it might even have been considered a sign of masculinity. Thus, we have Solomon in the *Ecclesiastes* with his 700 wives and 300 concubines. We have the Prophet in the *hadis* and the biographies with nine or eleven or twenty wives and concubines.¹² Today we look upon polygamy as inequitable and unjust. In the *hadis* we find a young man being urged to get married on the ground that 'the best person of this [Muslim] nation [Muhammed] of all other Muslims, had the largest number of wives'¹³. (62.5-7) Today child marriages are taboo, and for a middle-aged man to marry a little girl would be quite unthinkable. But that was not so a thousand years ago. And so we have the *hadis* reporting Aisha's account that the Prophet, then in his fifties, married her when she was six and consummated the marriage when she was nine.¹⁴ Today we frown upon adultery. But Krishna's adventures with the *gopis* are legend. Indeed, they are among the things that endear him to devotees.

Today we prize literacy, and sometimes even think of it as a prerequisite for wisdom. That was not always the case. Quite the contrary. That the Prophet could not read or write, far from being something to be diffident about, was not just freely acknowledged, it was put forth as proof of the fact that the Quran had come from God, for how could a man who could neither read nor write, it was asked, on his own produce prose and poetry of such majesty, such power?¹⁵

It isn't just that, time and circumstances having changed, the deeds

seem incongruous today and we are offended if someone—especially if he belongs to another religion—so much as recalls them. The change in norms about what is and what is not ‘talked of in polite company’ itself leads us to take offence. People were free and open in seventh century Arabia. We have Aisha talking candidly about the Prophet’s relations with his wives. Were someone to so much as reproduce the remarks today, even if this be to set down the example the faithful should follow, the ideal conduct being that of the Prophet, a storm would rise.

Indeed, change of an even more trivial kind, change in the way we talk has the same consequence. In the times recalled by the Old Testament, in the time of the Prophet, the language people used was direct, rustic. Today it is ‘sophisticated’, ‘polite’. A *hadis* will exemplify the resulting difficulty:

Narrated Ata: I heard Jabir bin Abdullah in a gathering saying, ‘We, the companions of Allah’s Apostle, assumed the state of *Ihram* [the prohibitions] to perform only Hajj without *Umra*.’¹⁶ Jabir added, ‘The Prophet arrived [in Mecca] on the fourth Dhul-Hijja. And when we arrived [in Mecca], the Prophet ordered us to finish the state of *Ihram*, saying, “Finish your *Ihram* and go to your wives [for sexual relations].”’ Jabir added, ‘The Prophet did not oblige us [to go to our wives] but he only made that legal for us. Then he heard that we were saying, “When there remain only five days between us and the day of Arafat he orders us to finish our *Ihram* by sleeping with our wives, in which case we will proceed to Arafat with our male organs dribbling with semen” (Jabir pointed out with his hand illustrating what he was saying), Allah’s Apostle stood up and said, “You [people] know that I am the most Allah-fearing, the most truthful and the best doer of good deeds [pious] from among you. If I had not brought the *Hadi* [the animal to be sacrificed] with me, I would have finished the *Ihram* as you will do, so finish your *Ihram*. If I had formerly known and I came to know lately, I would not have brought the *Hadi* with me.” So we finished our *Ihram* and listened to the Prophet and obeyed him.’¹⁷ (92.464)

We wouldn’t talk and gesture today the way Jabir did, and certainly

not in the presence of a man of God. If we did, no one would put that down in a holy book. But as it stands, given the importance that was attached to such questions, the conversation forms a part of a collection that is revered next only to the Quran by the devout. If someone so much as reproduces the episode verbatim we are apt to take offence. 'His only object', we are apt to allege, 'is to hold our holy books to ridicule.' How different our reaction is from that of the Prophet. He did not think that it was improper of his followers to raise such doubts or to use such language in his presence. He did not feel that such language or gestures 'lowered his stature' in any way. Nor did he feel that some ordinary person should settle such questions rather than him. And the very purpose of the great compilers like Imam Bukhari in setting such exchanges down was to ensure that we would study them, cite them, propagate them.

The Key

THE MORAL is clear. In examining a religious text or the life and teaching of a religious leader, we must examine the proposition *per se*, the deed *per se*. That the proposition is urged in the Quran rather than the Bible, that the deed is of Krishna rather than of Moses, must make no difference to our assessment of it.

Correspondingly, when we come across a critique of a religious text or of the life and deeds of a religious figure, we must weigh it on its own. That a Hindu or a Muslim has written it must make no difference to our assessment of it.

These two rules are obvious enough. And yet how often it is that accounts of Jinns and spirits seem to us to be superstitious nonsense when we hear them at a gathering of villagers, but how they seem to be veritable 'proofs' of another dimension of reality when we come across them in some text we revere—say the Quran or the *hadis*. How very often is it that when someone of our faith criticises some aspect of our religion, the criticism seems to us to be perfectly in order, even scholarly, but how the identical criticism, if it has been made by someone who happens to have been born into a different religion, sends us up the wall. We must grow up. We must discard this defensive militancy.

Consider the following law that is laid down in a much revered text:

If a man has a stubborn and rebellious son, who will not obey the voice of his father or the voice of his mother, and, though they chastise him, will not give heed to them, then his father and his mother shall take hold of him and bring him out to the elders of the city at the gate of the place where he lives, and they shall say to the elders of the city, 'This our son is stubborn and rebellious; he is a glutton and a drunkard.' Then all the men of the city shall stone him to death with stones; so you shall purge the evil from your midst; and all [of our people] shall hear and fear.¹⁸

Now, would this rule be just if it is in the Quran but unjust if it is in the Bible, just if it is in Manu but unjust if it is not?

Is retaliation cruel, primitive, barbaric when it is in one text,

... Your eye shall not pity; it shall be life for life, eye for eye, tooth for tooth, hand for hand, foot for foot...

it just and fair and humane when it is in another:¹⁹

O believers, prescribed for you is retaliation, touching the slain; freeman for freeman, slave for slave, female for female. But if aught is pardoned a man by his brother, let the pursuing be honourable, and let the payment be with kindness...

In retaliation there is life for you, men possessed of minds...

The holy month for the holy month; holy things demand retaliation.

Whoso commits aggression against you, do you commit aggression against him like as he has committed against you, and fear you God.²⁰

Today we are assured the freedom to practise our religion. Should we value that or go by the following, typical, provisions of a text—every word of which is said to be true and excellent, and eternally so?

You should surely destroy all the places where the nations you shall dispossess served their gods, upon the high mountains and upon the hills and under every green tree; you shall tear down their altars, and dash in pieces their pillars, and burn their... [deity] with fire; you shall hew down the graven images of their gods, and destroy their name of that place.²¹

Should we go by the freedom we have today, or by the dictum of a prophet that, should we catch anyone honouring a god other than the one prescribed by him,

Then you shall bring forth to your gates that man or woman who has done this evil thing, and you shall stone that man or woman to death with stones....²²

Would these dicta be wrong if they were edicts of Mohammed Ghaznavi but right if they were proclamations of the Prophet? Would they be impermissible if they were laws of Moses but mandatory if they were laws of Manu or Mohammed?

Today we are free not just to practise our religion but also to peaceably profess it to others. Should we go by this freedom or by the holy text which lays down,

If your brother, the son of your mother, or your son, or your daughter, or the wife of your bosom, or your friend who is your own soul entices you to serve other gods... you shall not yield to him or listen to him, nor shall your eye pity him, nor shall you spare him, nor shall you conceal him; your hand shall be first against him to put him to death, and afterwards the hands of all the people. You shall stone him to death with stones.²³...?

Is God to be obeyed when he tells us that as for those who fight against Him and His chosen emissary, as for those 'who hasten about the earth to do corruption there' and who do not repent before we have subjugated them'

They shall be slaughtered, or crucified or their hands or feet shall alternately be struck off, or they shall be banished from the land.²⁴...?

Is He to be obeyed when He enjoins that we must, upon encountering those who do not subscribe to the religion that He is laying down in *that particular* scripture,

Strike off their heads till you have made a great slaughter among them, and of the rest make fast the fetters.²⁵

and disregarded when He enjoins in a completely different scripture that if 'certain base fellows' in a city preach that we should serve gods other than the one He has specified in *this* scripture (which is naturally not the God specified in the preceding scripture),

You shall put the inhabitants of that city to the sword, destroying it utterly, all who are in it and its cattle with the edge of the sword. You shall gather all its spoil into the midst of its open square, and burn the city and all its spoil with fire, as a whole burnt offering to the Lord your God; it shall be a heap forever, it shall not be built again.²⁶ ...?

Is the holy text of one religion excessive when it provides

When you draw near to a city to fight against it, offer terms of peace to it. And if its answer to you is peace and it opens to you, then all the people who are found in it shall do forced labour for you and serve you. But if it makes no peace with you, but makes war against you, then you shall besiege it; and when the Lord your God gives it into your hand you shall put all its males to the sword, but the women and the little ones, the cattle and everything else in the city, all its spoil, you shall take as booty for yourselves; and you shall enjoy the spoils of your enemies, which the Lord your God has given you. Thus you shall do to all the cities which are very far from you, which are not cities of the nations here. But in the cities of these peoples that the Lord your God gives you as your inheritance you shall save alive nothing that breathes, but you shall utterly destroy them...²⁷

but a treatise on law of another religion right and just when it enjoins similar conduct? Is one prophet right in the following instance? He orders his followers to wreak vengeance on persons of another group.

His followers do so and, as the holy book says, *they slaughter every male*. They take captive the women of the other people and their little ones and they take as booty all their cattle, their flocks and all their goods. 'All their cities and the places where they dwelt, and all their encampments,' the holy book continues, 'they burnt with fire, and took all the spoil and all the booty, both of men and of beast.' They bring the booty and the captives to the great prophet and the priest. The Prophet is livid. 'Have you let all the women live?' he asks. He tells them that these are the ones who caused them 'to act treacherously' against the Lord in a particular matter and that is why the plague came among them. 'Now, therefore', he orders them, '*kill every male among the little ones, and kill every woman who has known man by lying with him. But all the young girls who have not known man by lying with him, keep them alive for yourselves*' The subsequent passages tell us that 32,000 little girls are thereby kept for debauchery and use.²⁸ And is another equally revered prophet wrong in the following instance? A few men join his religion, but later desert him, kill a shepherd and run off with the animals. The Prophet has them caught. He then orders his followers to cut off their hands and legs and to brand their eyes with heated pieces of iron. He orders that the cut hands and legs should not be cauterised so that the men bleed to death. 'And when they asked for water to drink,' records the Book we revere, 'they were not given water.'²⁹

Today a transgression is judged independently of who the transgressor is and who the victim. Should we abandon this practice and proceed by the rules of Islamic jurisprudence as much as of Manu, that the punishment for a crime will depend not only on the crime *per se* but on who commits it and against whom it is committed—i.e. on the caste to which the two belong, on whether one is a believer and the other a non-believer, on whether one is a free man and the other a slave?

Or consider the texts which assure us that, for instance, wearing a particular type of beads, smearing oneself with ashes, putting a particular mark on one's forehead and other parts of one's body, living in one city, dying in another, reading a text, having it read to one, having it read to others, falling within the range of the vision of a realised soul, etc. will absolve us from the most heinous sins and lift us to states of the most exalted beatitude. Should we go by the substance of a person's deeds or by the tokenism that these sacred texts urge? Would the propositions be valid if the cities in questions were Mecca and Medina

but bogus if they were Mathura and Kashi? Would they be valid if the Book is an Upanishad but bogus if it is the Quran?²³⁰

It should be obvious that the deeds, even of great men, must be evaluated independently of their greatness, that the propositions of law or of ethics and morality must be evaluated independently of the texts in which they occur. We must judge the prophets as we would judge the ordinary men and women they set out to reform. We must evaluate the sacred texts as we would evaluate any other text.

A Choice

THERE IS, however, a problem. For the fact is that we do indeed have two diametrically opposed traditions in this regard. On the one hand we have the example of the prophets of the Old Testament and of Mohammad, the Messenger of Allah. And on the other, we have the example of the Buddha and of Jesus.

Elisha, as is well known, was a man of God. The Bible tells us that the water parted when he touched it with the mantle of Elijah which he had inherited, that at his bidding unwholesome water became wholesome. He typifies one kind of response:

He went up from there to Bethel [the Bible reports] and while he was going up on the way, some small boys came out of the city and jeered at him saying, 'Go up, you bald head! Go up, you bald head!' And he turned around and when he saw them, he cursed them in the name of the Lord. And two she-bears came out of the woods and tore forty-two of the boys....³¹

This is one way in which a man of God reacts. And that too just to the playful taunts of young children. It was invariably the pattern of the prophet Mohammed's reaction. After the battle of Badr, instead of following the advice of Umar who wanted all the prisoners to be slaughtered, the Prophet ordered that ransoms should be demanded first and that only those should be killed for whom no one was prepared to pay a ransom. But he was merciless towards two who had disputed his teaching, Uqba b. Abu Muayt and al Nadr b. al Harith. He ordered that these be slaughtered at once. When one of them screamed, 'But who will take care of my sons, Mohammed?', the Prophet answered, 'Hell.' Similarly, he was merciless on returning from

Badr. He ordered that Asma bint Marwan who had recited verses against him be got rid of. A follower slaughtered her with his sword as she slept with her children, the youngest, still at the breast, asleep in her very arms. When he went to the Prophet in the morning and told him, 'Messenger of God, I have killed her,' the Prophet exclaimed, 'You have done a service to Allah and his Messenger.' A few days later the Prophet exhorted his followers to put to death the poet Abu Afak, who was by then over a hundred years old. He too was killed in his sleep. The poet Kab ibn al-Ashraf was killed by treachery with the Prophet's approval and his head was brought back amidst great acclamation to the Prophet's house and flung at his feet. On re-capturing Mecca the Prophet condoned past failings of the populace but, as was his custom, he did not spare those, including some female singers, who had been sarcastic or scornful about him.³²

The faithful count these executions or murders among the 'military expeditions' of the Prophet and his followers.³³

This, then, is one sort of example before us. The contrary example is that of the Buddha and Jesus. When someone expressed doubts about their doctrine, they reasoned with him. When someone reviled them or heaped scorn on them, they tried with infinite patience to lead him to the truth they had seen.

We follow the example of the Old Testament prophets and the Messenger of Allah on the false notion that pouncing on those who question any aspect of our religion or our text is a mark of faith. Quite the contrary. Such hypersensitivity shows *a lack of faith*, it shows that we are *nervous* about the doctrine and the text, that we are *not* confident that they will stand scrutiny.

The man of faith can only be delighted when someone sets out to examine his religion and his holy texts. For the examination can only bring out, even more swiftly than would be the case otherwise, their greatness and their unparalleled excellence.

For the humanist, the secularist, the golden rules are thus as follows:

- the proposition must stand on its own; the fact that it occurs in one text rather than another makes no difference;
- the deed must stand on its own; the fact that it is the deed of one prophet rather than of another, the fact that it is the deed of God rather than of man makes no difference; we must judge God and His prophets the way we would judge one another;

- the answer to an argument is a better argument, not abuse or intimidation;
- the answer to scorn is wit, not the bludgeon or the knife.

The example to follow is that of Buddha and Jesus, not of Elisha and Mohammed.

Notes

1. 'The Lion and the Ostrich', in *Suicide of a Nation*, Arthur Koestler (ed.), Macmillan, New York, 1964.
2. Matthew, 23.
3. Swami Dayanand, *Satyarthaprakash*, Star Press, Allahabad, 1915, pp. 443-6.
4. *Adi Sri Guru Granth Sahib*, Raga Gauri, Mohalla 1, 'Sir Khohaai piyahi mal-vaandi juthaa mungi mungi khaai....'
5. *Adi Sri Guru Granth Sahib*, Gauri, Mohalla 5, 'Bin simran jaise sarap arjaari...'
6. The example is taken from Padmanabh S. Jaini, 'The disappearance of Buddhism and the survival of Jainism', in *Studies in the History of Buddhism*, A.K. Narain (ed.) BR Publishing Corporation, Delhi, 1980.
7. For instance, *Young India*, 29 May 1924.
8. Maxime Rodinson, *Mohammad*, Penguin Press, London, 1971, pp. 77-8, 237.
9. *Ibid*, pp. 51, 55-6, 121, 125, 158-9, 170-2, 187, 208-14, 255, to cite just a few examples.
10. *Ibid*, pp. 92-4.
11. Rodinson's biography is just one of the available ones. Much stronger examples can be gleaned from the earlier biographies or essays of Muir, McDonald and scores of others.
12. Ali Dashti, *Twenty-three Years, A Study in the Prophetic Career of Muhammad*, George Allen and Unwin, 1985, p. 120 ff., gives one count, this one reaching twenty.
13. *Sahih al-Bukhari*, LXII. 5-7.
14. For instance, *Sahih al-Bukhari*, LXII. 64, 65, 88.
15. Thus the *Hadis* freely report the Prophet, upon being asked by Allah to recite, saying twice, 'I am not lettered'; cf. *Sahih Muslim*, LXXIV. 301-8.
16. *Hajj without Umra*: the lesser pilgrimage in which one dispenses with the sacrifice.
17. *Sahih al-Bukhari*, XCII. 464.
18. Bible, Deuteronomy, 21.18.
19. *Ibid*, 19.21 (see also *Ibid*. 19.11-13).
20. Quran, 2.173-5, 190.
21. Bible, Deuteronomy, 12.2-3.

22. Ibid, 17.2-7.
23. Ibid, 13.6-11.
24. Quran, 5.37-8.
25. Ibid, 47.4-5.
26. Bible, Deuteronomy, 13.12-16.
27. Ibid, 20.10-18. (Compare the chapter on Jihad in the great compilation of Sheikh Burhann'd-din Ali on Muslim Law, *The Hedaya*.)
28. Bible, Numbers, 31.1-54.
29. *Sahih al-Bukhari*, 82.794-7; *Sahih Muslim*, 4130-7.
30. Scores and scores of passages in the *Upanishads* are marred by this tokenism. For some examples see Arun Shourie. *Hinduism: Essence and Consequence*, Vikas, Delhi, 1979, pp. 114-128, 216-7.
31. Bible, Kings, *Kings*, 2.23-4.
32. On these incidents see Ibn Ishaq, *The Life of Muhammad*, A. Guillaume (tr.), Oxford, Karachi, 1978, pp. 308, 364-9, 550-1, 675-6; or Maxime Rodinson, *Mohammad*, *op. cit.*, pp. 167-8, 171-2, 176-7, 261-2.
33. For instance, *Sahih al-Bukhari*, LIX. 297-301, 369-372.

CHAPTER II

‘Your Wives are your Field...’

18 June, Beemapally, near Trivandrum: By orders of the Jamaat, Sulekha Beevi to be flogged 101 times and her head shaven on a charge of adultery and drinking.

● 1 November, Perumathura, near Trivandrum: Shahbanat, a divorced young woman with two children, removed forcibly from her home on the charge of adultery, shaven and beaten by her former husband and the Jamaat men till she became unconscious.

● 13 November, Calicut: All India Muslim Personal Law Board announces decision to set up Shariat courts in different parts of the country.

● 15 November, Indore: Shah Bano asks the Supreme Court to ‘withdraw’ the verdict it had given in her favour.

● 20 November, Bombay: Over a hundred thousand Muslims demonstrate against the Supreme Court’s verdict on the Shah Bano case.

● 21 November, Ahmednagar: A mob of 10,000 stones 40-odd reformists and forces them to call off a state-wide campaign in support of the Court’s judgment.

● 24 November, Patna: A dozen are injured as a procession against the Shah Bano verdict turns violent.

A simple decision on whether a 70-year-old woman should get the Rs 25 as maintenance that the magistrate had decreed, or the Rs 500 that Section 125 of the Cr. P.C. specifies, or whether she should get nothing at all even when she is completely unable to maintain herself, is fast becoming a 'Muslims vs. the Rest' issue.

To many Muslims, even a harmless judgment that a 70-year-old indigent woman divorced by her husband after forty-five years of marriage and five children should get a little allowance is proof that the Hindus want to destroy their identity, to swallow them up. To the Hindus, even an academic defence of the Shariat is proof that Muslims are being pandered to, that in its weakness the country has allowed them 'special privileges'. It is proof positive to them that the Muslims owe primary loyalty to Islam rather than to the country. It is proof conclusive that behind the defence of Shariat is the design to retain polygamy, and behind *that* is a conspiracy to outstrip the Hindus by producing more children....

This road leads to bitterness, recrimination, riots and murder.

The Need to Get Down to Specifics

THE CURE IS to get down to specifics. The question is not whether my 'primary loyalty' is to Islam or to India—as far as I can make out, not just the 'primary' but the 'overriding' loyalty of the Hindu and the Muslim alike is to himself—but what provision of Muslim personal law is just and excellent and should therefore be made applicable to all, and what provision is inequitable and retrograde and to which therefore no one should be subjected.

The Hindu must confine himself to these specifics. He will discover that there are provisions in the Shariat that *should* be made applicable to all. Thus, for instance, he will find that in Muslim marriages it is mandatory to secure the consent of the bride. If she has been married as a minor and the marriage has not been consummated, she has the right to repudiate the marriage on reaching puberty. Similarly, the provision that a person can dispose of only a third of his property in his will, that the remaining two-thirds automatically devolves to heirs in fixed proportions, forces a Muslim to leave a fixed proportion even to a scoundrel who may have tormented him, but it also prevents him from being unjust to anyone out of pique.

The Hindu will also discover that many provisions of Hindu personal law are inequitable and should be replaced. For instance, it is almost impossible for a wife whose husband has taken a second wife to bring him to book for bigamy. Similarly, when a couple is getting divorced, there is a *presumption* that the husband will be better able to look after the adult children and should therefore have the custody of the children as their 'natural guardian'. The presumption is unwarranted, it places the wife at the greatest disadvantage; the fear of losing the children forces many a wife to continue to suffer.

The Muslim too will do well to focus on specifics. The more he makes this also into a Hindu-Muslim issue, the more he will instigate a backlash. Nor can one hope to shut off inquiry and debate by asserting divinely ordained immunity. For one thing, the scriptures of others also claim to have originated from God or to be reporting what He said. The Bible is full of 'God spake's. The Institutes of Manu claim no less: 'He [the Imperishable One] having composed these Institutes [of the sacred law], Himself taught them, according to the rule, to me alone in the beginning....' (1.58) '... Wise Manu sprung from the Self-existent, composed these Institutes [of the sacred law],' (*The Laws of Manu*, 1. 102) 'The Lord Prajapati, created these Institutes [of the sacred law] by His austerities alone....' (*Ibid*, 11. 244) May the Christians, the Hindus and others not then claim similar exemption from inquiry, discussion, reform? Moreover, the confidence that our scripture is divine, that the Prophet is the Perfect Man whom Allah sent down to mankind as the great exemplar, should make us not reluctant but eager to engage in free and rational discourse about the doctrine, the Prophet and everything that flows from them. The more free and rational and abundant the discussion is, the more swiftly will their excellence be established.

Each of us should also see that the best way to guarantee our interests—of each of us as individuals and of all of us together—is not by clutching on to this fig-leaf of separateness or that, but of working together to strengthen the institutions of a modern, secular State. Every badge of separateness spurs others to assert separateness too—notice the demand that was put forward recently that the Sikhs too should be allowed to have their own personal law, notice also the hardening of the sentiments of Hindus *qua* Hindus. It is precisely for this reason that when our Constitution was framed it was clearly recognized that

the different communities were being allowed to retain their personal laws purely as a temporary expedient, and that—as Article 44 says—the endeavour of the State will be ‘to secure for the citizens a uniform civil code, throughout the territory of India.’ Steps were taken to reform Hindu law, and the reforms were carried through in the teeth of the opposition of obscurantists, who too were insisting that personal law and religion were inseparable, that the law, like the religion, was divinely ordained and could not therefore be altered by human hand, that amending one would endanger the other. All these specious assertions were wisely set aside. The law was updated and reformed. Hinduism did not collapse.

Why Reform Stopped

EVER SINCE the mid-nineteenth century, Muslim law too was being reformed slowly. Whereas under Muslim law the penalty for apostasy was not just the loss of rights in property, the automatic dissolution of the marriage bond etc., but death, the Caste Disabilities Removal Act of 1850 banished all laws and usage which impaired the rights of property, inheritance or any other rights of an individual ‘by reason of his or her renouncing, or having been excluded from the communion of, any religion, or being deprived of caste.’ The jurisdiction of the Qazis was abolished, and where the personal law of different communities continued it was thenceforth to be administered by magistrates appointed by the State. Muslim criminal law was replaced by the Indian Penal Code of 1860 and the Criminal Procedure Code of 1898. Muslim law of evidence was replaced by the Evidence Act of 1872. This put a host of matters of personal law—the presumption of death, the legitimacy of children, etc.—within the purview of secular, modern legislation. In the same year, the Contract Act was put in force and applied equally to all—Hindus and Muslims alike. As the textbooks record, the Married Women’s Property Act of 1874, the Majority Act of 1875, the Transfer of Property Act of 1882, the Guardians Wards Act of 1890, the Indian Succession Act of 1925, one by one extended the ambit of modern, secular, common principles to spheres that had been regarded as the exclusive preserve of the separate personal laws of different communities.

Moreover, even in spheres where the different personal laws continued to operate, the procedure to be followed in the courts, the

nature of evidence to be taken into account, etc. came to be governed by the common codes and acts. Reform continued apace. Thus while, as we shall see, a tradition of the Prophet would seem to recommend that daughters be married off at the age of twelve, and while child marriages were as customary in Islamic society as in other traditional societies, the Child Marriages Restraint Act of 1929 began the process of the State laying down the minimum age for marriage. Similarly, while Muslim law leaves unfettered, complete and exclusive rights to the husband to divorce his wife, and confers none on the wife whatsoever—save what the husband may in his discretion grant her—the Dissolution of Muslim Marriages Act of 1939 began the process of redressing the balance by enabling the wife to initiate the proceedings too on specified grounds. Principles of equity from English law were gradually grafted on to the Muslim law of gifts. And so on.

This process of reform and integration stopped dead with the Partition. Apart from a few stray extensions—such as the Special Marriage Act of 1954, which gives all couples the option to register their marriages under this Act and thenceforth be governed by common, modern, secular laws—the country abandoned all efforts to update or reform Muslim law, or to move towards a common code.

The reason has not been any new, suddenly discovered veneration for personal law but the trauma of Partition—the urge to ‘leave bad enough alone’—that is, the reason has been expedience, not principle.

The consequences are before us. These symbols of separateness continue. What is good in the law of this or that community is not extended to all. What is iniquitous in it continues to torment members of that community. And anomalies reign: a Muslim husband remains free to cast away his wife by pronouncing a single word thrice, while a Christian couple—even if they amicably agree that their marriage is not workable—must wait for three judges of a *High Court* to confirm their divorce!

The Secular Approach

THREE POINTS should be obvious. First, under our Constitution, by the very nature of our State, no religious or other group has any inherent or perpetual right to insist that it will be governed by laws different from laws that apply to the generality of citizens.

Second, every tradition has much that is valuable, just as every tra-

dition has much that is today regressive—whether it was progressive at one stage or not. The excellence of a tradition on one point is no justification for continuing an inequity on another. Similarly, the inequities of one tradition are no justification for the inequities of another. Dowry murders among Hindus do not justify the fact that Muslims can discard a wife so arbitrarily, any more than the fact that Muslim husbands have this terrible power justifies dowry murders among Hindus. We should imbibe the best from each of the traditions, just as we must reform each of them.

Third, all our traditions—Hinduism, Islam and all the others—are equally the common heritage of each one of us. Each of us therefore has the fullest right and the equal duty to examine, to debate, to urge the adoption or reform of any one and all of the traditions. And each of us must exercise this right and discharge this obligation without the slightest trace of self-consciousness for being a Muslim or a Hindu.

‘You had better write a critique of Hindu personal law also,’ a friend counsels me, ‘otherwise you will be accused of being communal.’ But that precisely is the kind of self-consciousness that we must rid ourselves of. A parallel paper can certainly be written about Hindu personal law. And the occasion for writing it will arise when the Hindus start saying that modern, secular laws should not be applied to them, that the laws of Manu and Vashishta and Apastambha should not be altered since they are divinely ordained.

Today these claims are being put forward on behalf of Muslim personal law and therefore they must be examined in reference to that law. That is the subject I will deal with, objectively, in a forthright manner, with reference to the texts and the provisions themselves. There is a lot of ground to cover and I am not going to waste space making parallel points about Hindu law just to ‘prove’ my secular credentials, just to ‘prove’ that I am approaching the matter as an Indian and not as a Hindu.

Propositions

IT MUST HAVE struck the newspaper reader that in all the commotion that has been raised against the Shah Bano verdict, no Muslim leader or organization has argued that the verdict is unjust, that casting off a 70-year-old indigent woman without any maintenance after 45 years of marriage and five children is right and just.

The assertion, instead, is that discarding her in this way is in accord with Allah's word and the Prophet's practice, that, therefore, asking a Muslim to pay anything—be it Rs 25 or Rs 500—as alimony is compelling him to violate his religion.

Five propositions are being urged to create this impression:

- Every bit of Muslim personal law is derived from the Quran and the *sunna*, i.e. the practice of the Prophet.
- Being divinely ordained, it cannot be altered by a merely human agency like a court or a legislature.
- Muslim law—deriving as it does from the Quran and the practice of the Prophet—is perfect, in that it is excellent, i.e. it is the ideal basis for an ideal society; and that it is complete, i.e. it anticipated all eventualities, all circumstances of time and place, and provided just answers for all of them.
- It is a seamless garment—if one thread of it is pulled out, all of it will come apart.
- In Islam there is no partition between personal law, law in general, and life; Islam provides an integrated code for all aspects of life; therefore, to ask a Muslim to do something contrary to Muslim law is in fact to compel him to violate his religion as a whole.

I shall argue that

- What we know as Muslim law today owes more to clerics than to the Quran or the traditions of the Prophet.
- From the earliest times—that is, from the days of revelation itself—it has been supplemented and changed.
- It bears—and manifestly so—the stamp of the time, place, and circumstances in which it originated.
- Muslims, like the rest of humanity, have grown beyond the beliefs, practices, institutions of that time in every aspect of life from cosmology to medicine to law; growing beyond what was said and done at that time has not injured Islam.
- If there is no difficulty in acknowledging that what was said and done about a host of these matters is indeed dated, why is it sacrilegious to recognize the same thing in the case of marriage or divorce or alimony or inheritance?
- On the other hand, if we insist that every word of what was said then is excellent and eternal, if we insist that every command of, say, the Quran must be followed, if we insist that everything it lays down is one seamless garment, we end up with another set of problems: are we

then to reintroduce and live by what it says, for instance, on apostasy, on *jihad*?

- Therefore, the only way to consider the question is to examine the specific provisions of the law.

- These may have been progressive in the context of seventh century Arabia, but by the standards of equity and justice mankind has reached today—in part, no doubt as a result of the example and efforts of giants like the Prophet—the provisions are regressive.

- And this result is not fortuitous, for the specific provisions are rooted in a conception—of women, for instance—which bears the stamp of seventh century Arabia.

In short, the fundamentalists are right. In asking the husband of the 70-year-old Shah Bano to pay her a maintenance allowance, the Supreme Court has gone contrary to Muslim personal law. That is a reason not for reversing the verdict but for re-examining Muslim personal law in the light of modern, secular principles.

Basis

FORMALLY, MUSLIM personal law is said to be derived from four sources: the Quran; the *sunna*, that is, the practice of the Prophet; *ijma*, that is, consensus (of the community? of jurists? of divines? of those possessed of piety, of devotion to Islam, etc.?—there are differences on all this); and *qiyas*, that is, reasoning by analogy.

Everyone knows about the Quran, of course. The original of the Book is believed to exist in heaven. It was revealed by Allah to His apostle, Mohammed, through the angel Gabriel, from time to time. It was put together in its present form after the death of the Prophet during the reign of the third Khalifa, Usman.

The practice and words of the Prophet form the second source of the law. These are described in the *hadis*, i.e., 'the traditions'. The first compilations began to be put together about 125 years after the Prophet's death. Several compilations were made. Six of these are regarded as canonical. Of the six, two—the compilations of Bukhari and Muslim—are the most revered. The two of them lived in the third century after the Prophet. (I will have occasion to refer to the two compilations often. All references to them are to the following editions: *Sahih al-Bukhari*, Volumes 1 to 9, Islamic University, Medina Al-

Munawwara, Kazi Publications, Lahore, 1979, *Sahih Muslim*, Volumes 1 to 4, Kitab Bhavan, Delhi, 1978.)

These records of the practice and words of the Prophet are revered almost as much as the Quran, for Allah said, 'I have sent you *two things*, and you will not go astray as long as you hold them fast. The one is the Book of God, and the other the *sunna* of the Prophet.' While there are some traditions which say that a rule from the *sunna* cannot override a verse of the Quran, there are others that affirm that a verse from the Quran cannot be used to abrogate a rule derived from the *sunna*. Modern texts put the two at par. Thus, for instance, our most widely used text says, 'As a source of law, *hadis* is as binding as the principles of the Koran,' 'In the word of God is included, of course, the Koran but the divinely inspired *sunna* of the Prophet ranks equal.' (Mulla's *Principles of Mohamedan Law* by M. Hidayatullah, 17th edition, 1972, Tripathi, Bombay, pp. xii-xiii.) The importance of this will become evident soon enough.

Ijma played a very important part in the formative stages of the law. The acceptance of one particular version of the Quran rather than the others as the one and only authentic version, the institution of Caliphate, the growth of different schools of law—there were nineteen at one stage—and the gradual ascendance of four among them, the recognition of the authority of Shariat courts and the subsequent modifications in their jurisdiction—all these, and of course a whole host of particular points in law, arose as a result of consensus, at first among the followers of Islam as a whole and then among narrower and narrower circles.

Ambiguities in the original texts, the fact that they covered only a few of the many eventualities that arise in life, change and the new requirements that expansion entailed are what made this practice necessary. Legitimacy followed. The practice was said to derive from the fact that Allah had endowed Muslims with the necessary ability to innovate and adapt. Had Allah not said, 'You are the best of peoples ever raised up for mankind?' (*Quran*, 3.310) Similarly, three hundred years after he died, the Prophet was also recorded to have said, for instance, 'My followers will never agree upon an error.' It followed that if through *ijma* they now agreed on a point, their decision necessarily had to be right.

Innovations and substitutions through *ijma* were made easier by

recognising that while the texts were of course inviolate, there was the right of *ijtihad*, that is to interpret them, to use one's reason, to deduce logically.

'It is incumbent on you to follow the most numerous body,' the Prophet was recalled as saying and implicit in this, it was said, was the permission to the majority to form an opinion. 'Whatever Muslims hold to be good,' he was recalled as saying, 'is good before God.' (The word 'whatever' was to be strictly circumscribed later on, but for the time being this too was taken to contain the permission for members of the community to decide on their own by consultation among themselves.)

Strictly speaking, as the Quran was said to be not just excellent but complete in all aspects—i.e., as it was said to provide not just the basis for the ideal society, but also to anticipate and provide the answer for every possible situation—Allah Himself having said, 'Today I have perfected your religion for you, and have *completed* My blessing upon you, and I have approved Islam for your religion,' (*Quran*, 5.4-5)—in view of all this, *ijma*, *ijtihad*, etc. should not really have been necessary.

But they proceeded apace. And, as is obvious, while retrospective sanction for them may have been couched in the words of Allah or the Prophet, the consensus was being arrived at, the interpretations and constructions were being made, not by the Divine Lawgiver or the Prophet but by ordinary mortals like any of us.

As the decades passed, two things happened. No basis had been laid down for ascertaining the consensus. The verses of the Quran and the traditions of the Prophet that were being cited had referred to the entire community of believers. As Islam spread, as different States were formed, each proclaiming adherence to it, as they began or continued their wars against one another, it became more and more difficult to ascertain the consensus of the community of believers.

Second, the freedom implicit in *ijma* and *ijtihad* led to a welter of opinions on every point, to endless disputations, to dangerous free-thinking.

Reaction took two forms. *Ijma* was narrowed down to mean the consensus, not of the community, but of the jurists and the Qazis, and, later still, of the jurists and, for different groups, the Qazis of different areas—of Medina for some, of Damascus for others, and so on. Traditions were now cited to show that the Prophet's practice had not been to consult all and sundry but only the few who were qualified to give an

opinion—his select companions. Indeed, it was recalled that he had warned, ‘Allah will not deprive you of knowledge after He has given it to you, but it will be taken away through the death of the religious learned men who, when consulted, will give verdicts according to their opinions whereby they will mislead others and go astray.’ (*Bukhari*, 92.410,411) Next, the right to interpretation too was progressively restricted to ‘those qualified to exercise it’—the *mujtahids*, the few ‘who strive’. Soon, in fact just about 300 years after the Prophet’s time—that is, almost a thousand years ago—‘the doors of *ijtihad*’ were officially and formally ‘closed’ on the grounds that all points had been already clarified and that, in any case, piety had fallen to such a state that there were no men left who were qualified to exercise the right to interpret. Sure enough, there were traditions which supported this closure, traditions which recalled that the Prophet himself never gave a decision on his opinion or on *qiyas* but that he confined himself strictly to following the word of Allah (as Allah, it was recalled, had enjoined all to do—e.g. *Quran* 4.105), that when the Allah was silent on a matter, he too kept silent (e.g. *Bukhari*, 92.412-13).

Ijma of the community came thus to mean whatever had come to prevail, whatever had come to be accepted one way or another, as evident from the actual practice of the believers. And *ijma* of the learned came to mean the *fatwas* and opinions of the learned, later still of the Qazis of the particular area. *Ijtihad* was replaced by *taqlid*, the practice of abiding—abiding literally and one hundred per cent—by the rulings of the earlier learned and the Qazis.

The learned and the Qazis, in turn, came to depend on kings and courtiers. Some of them continued to be men of learning and piety. Most of them ended up as the clergy of every other religion: preoccupied with externals, factionalists, using religion and law to further their personal and sectarian interests, apologists bending the law to legitimise what the king and the courtiers were doing in any case. And so on. Several of them had to be punished for embezzling funds, for amassing wealth etc. In his outstanding work, *The Indian Muslims* (George Allen and Unwin, London, 1967), Professor Mujeeb recounts in detail the progressive interdependence of the Qazis, the princes and the courtiers, as well as the consequences for what we today know to be the Shariat.

A single illustration will have to suffice. The admonitions of the Quran against dissolute behaviour in general and wine in particular

are well known. Notice now how the clerics state the law in *Fatawa-i-Qadi Khan*: 'It is written in the book of *nikah* [marriage] that a person both of whose parents are Muslims is *Kufw* [eligible for marriage].' But, as Professor Mujeeb reminds us, the jurist introduces variations:

If a person is *openly* immoral (for instance, he drinks wine openly and staggers and stumbles while passing through streets), he will not be considered eligible for a virtuous young woman. But he will be eligible if he conceals this fact and does not let it become evident....If an openly immoral person is treated with respect by the people, for instance, because he is a courtier, then he will be considered eligible, but if he is a common sort of man, he will not be.

Naturally, the clerics used the law and the power to lay it down, not just to legitimise the conduct and performance of their patrons and their class, but also to wage their own little faction fights, and to indulge their own notions. Professor Mujeeb recounts how two famous jurists—Qadi Shihabuddin Daulatabadi and Shaikh Abdul Fath Jaunpuri—'engaged in a bitter controversy', how they 'abused and cursed each other' on the question of whether the saliva of a cat was clean or unclean (Mujeeb, *op.cit.* pp. 76-7). He recalls how another cleric caused great consternation by declaring that it was a deadly sin to let a midwife cut the umbilical cord of a new-born child, that this was Hindu custom which should not be imitated, and that a Muslim father should perform the operation himself (*Ibid*, p. 396). Scores of other examples can be given.

Now, for the question that we are considering, two points are important. First, all the decisions connected with this process—the introduction of *ijma*, the opening of the doors of *ijtihad*, the narrowing of *ijma* to a few, then to the few of one region or another, its final extinction, the closing of the doors of *ijtihad*—each of these decisions was made by ordinary human mortals, neither by Allah nor by the Prophet. Second, what we know as Muslim law today is the amalgam of the dicta, the *fatwas*, the inclinations of these very ordinary, very human beings.

It is made out that each and every bit of what we know to be Muslim personal law is from the Quran, that therefore amending any part of it will amount to mutilating the Quran. Contrast this with the facts of

history and evolution sketched above. And contrast them too with the actual practice that our courts follow while administering the law. Citing judgments, a recent text summarizes the position:

In India the traditional law of the Muslims is to be accepted as it is found in the books of authority. The courts or the lawyers do not have to locate the principles of law in the Quran or the *sunna*. Nor have they to look or arrange for *ijma* [consensus of the jurists] on any particular issue. As regards other sources mentioned above [*qiyas*, etc.] the courts neither have to employ them nor to ask any contemporary jurist to do so in a given case.

Thus, each source of law recognised under the classical theory is now, in India, rather dormant. The courts cannot exercise the power of *ijtihad*; nor do they recognise the authority of any *mujtahid* of our age. Under the Indian law the courts have to act as *muqallids* [conformists] in respect of the Sunnis (who agree that the doors of *ijtihad* are closed) as well as the Shias (who, in theory, believe in the continuing possibility of *ijtihad*).

The courts in India have firmly accepted the principles [of] *taqlid* by laying down and acting upon the rules stated below: (i) In administering Muslim law no court should attempt to put its own construction on any Quranic text. (ii) No court should examine the conformity of any traditionally settled legal principle with the relevant text of the Quran. (iii) No reported *hadis* should be taken by the courts literally so as to deduce from it a new rule of law. (iv) The lawyers of the modern age cannot be allowed to introduce new rules of law by claiming that they logically follow from the texts of the Quran or the *sunna*. (v) No court should in any way circumvent or deviate from the law as settled by the jurists of the past even if it does not sound 'modern', 'just', or 'logical'. (Tahir Mahmood, *The Muslim Law of India*, Law Book Company, Lucknow, 1980, pp. 13-14. Mahmood cites the relevant cases for each rule. See also Mulla's *Principles of Mohamedan Law*, *op. cit.*, Sections 34-6).

Two conclusions are manifest. First, as far as our courts are concerned, Muslim personal law is *completely* frozen. *There is not the slightest possibility of reform from within the corpus*. And, second, it has been frozen in a mould not set by the original texts—the Quran and

the accounts of the practices of the Prophet—but fabricated by ordinary mortals like us, mortals whose rulings, *fatwas* and the like bear only too clearly the impress of their particular concerns, their time and circumstances.

And yet the impression is put out that to amend any bit of the law will be to mutilate the Quran itself.

The question for us is: what do we find when we go back to first principles—to the Quran, that is, and the traditions of the Prophet?

The Quran

THE QURAN has about 6000 verses. About 70 of these—on one count, about 80—deal with personal law. Twenty-five deal with divorce, 10 with marriage, 5 with fornication and adultery, 10 and 3 with inheritance and legacies respectively, 6 with orphans and minors, 7 with maintenance of divorced wives and widows, and 3 with maintenance in general.

It is thus a small corpus—specially because many of the verses repeat or reiterate what has been said elsewhere. From the beginning, therefore, there has been the most extensive elaboration of, the most extensive grafting onto, the most extensive discoveries and inventions about these few verses. For instance, as noted above, around 10 or so verses are all that there is on the law of inheritance in the Quran. Yet this branch of the law has been developed into a most extensive and intricate maze extending, quite literally, to the farthest reaches of the imagination. While in the Quran Allah confines Himself to spelling out the shares that are to devolve on near-relatives—like parents, sons, daughters, wives etc.—our jurists (as Goldziher, one of the greatest scholars of Islam, notes) have written treatises setting out the share in the estate that may be claimed by a male ascendant at the fifth degree of removal from the deceased if the latter dies childless. ‘Since in popular belief the metamorphosis of man into beast is within the range of natural occurrences,’ Goldziher continues with appropriate examples,

the jurists inquire in all seriousness into the legal status of enchanted persons and their responsibilities under the law. Since, on the other hand, demons frequently assume human shape, the jurists assess the consequences of such transformations for reli-

gious law; serious arguments and counter-arguments are urged, for example, whether such beings can be numbered among the participants necessary for the Friday service. Another problematic case that divine law must clarify: how is one to deal with progeny from a marriage between a human being and a demon in human form (a further eventuality admitted in popular belief)? What are the consequences in family law of such marriages? Indeed, the problem of *munakahat-al-jinn* (marriages with *jinn*) is treated in such circles with the same seriousness as any important point of the religious law. (Ignaz Goldziher, *Introduction to Islamic Theology and Law*, Princeton, 1981, pp. 63-4; the original in German was printed in 1910.)

Apart from the lengths to which the law had to be and was in fact developed, it was apparent from the beginning that some of the injunctions of Allah in the Quran just could not be fulfilled in practice. Conventional solutions—that is, solutions put together by ordinary human beings confronted with insoluble conundrums, with impractical requirements—were devised around these provisions of the law.

Two brief examples—one from the law of inheritance and one from that of marriage—will have to suffice.

Verses 4.12-15 and 4.175 of the Quran specify the shares that fall to heirs upon the death of a man. The verses distinguish between the case when a man dies leaving no children and when he is survived by children. In the latter case, there are further distinctions depending on whether there are sons or not, and, in either case, on whether the number of daughters is one, or more than two (what is to be done when there are two daughters is not quite clear).

Consider the case when a man is survived by children, among others. The relevant commands are as follows:

God charges you concerning your children: To the male the like of the portion of two females; and if they be women ['daughters' in this context] above two, then for them two-thirds of what he leaves, but if she be one then to her a half, and to his parents to each one of the two, the sixth of what he leaves...;

But if you have children, then for them [the wives] of what you leave an eighth, after any bequest you may bequeath, or any debt.

Now whether there is one daughter or more the share of the wives, mother and father remains at $1/8$, $1/6$ and $1/6$ respectively. If there is one daughter, then she receives $1/2$ of the estate. The share of each son must be double that of this daughter. Thus, if there is one son his share will be double of a half, that is, one; if there are two sons each must get double of a half, that is, each must get one. And so on. The consequence is that the total shares add to about *two* with one son, to *three* if there are two sons, etc. But there is, after all, a total of only *one* to distribute!

When there are two daughters, it isn't clear what should be done because the verses only specify 'if there be women *above* two' and 'if she be one'. When there are three or more, the same problem starts arising after a while.

Clearly, the injunctions just *cannot* be adhered to by mere mortals. The jurists therefore do the obvious thing: they scale down all the shares proportionately to ensure that, even though the precise figures given in the Quran are violated, the total to be distributed adds up to one. Now, this is an eminently sensible solution, but it is a *conventional* one, thought up by mere mortals, in clear violation of the command of God.

As a second example, consider the question of adultery. The Quran is very firmly set against it. After rumours had touched Aisha herself, God revealed that henceforth there must be four witnesses 'to the fact' (4.19; the incident forms the starting point of *Sura* 24 in the Quran; Aisha's account of it and of how the consequential revelation then followed is recounted at length in the traditions, for instance *Muslim* 35.6673.) Once the witnesses testified against the women, Allah said, 'then detain them in their houses till death takes them or God appoints for them a way'. (*Quran*, 4.15) At another place (24.2) it prescribes that she be flogged with a hundred lashes. As is well known, the punishment that the law-books prescribe is not *im-muring* (i.e. walling in till the woman suffocates to death) as divinely decreed but stoning to death, or a hundred lashes.

The way this replacement of the command of God by a practice that had prevailed in the area but had fallen into disuse is justified is typical. First, of course, there is the practice of the Prophet himself. The traditions record instances in which when persons themselves came and told him that they had committed adultery, he had them stoned to death. There is next the tradition attributed to Aisha that a *Sura* of the

Quran that now has 73 verses originally had 200 and one of those was the verse on stoning. Umar also confirmed that there had been a verse to this effect. (*Bukhari*, 82.816).

As can be imagined, the latter traditions of Aisha and Umar have raised more problems than they have solved. In the Quran some verses abrogate others. Did some or any of those 127 abrogate or throw new light on some or any of the ones that remain?

The point is that on several matters, conventional solutions have been found to modify or get around the specific commands of the Quran from the time of the Prophet himself. In fact, 'finding a way around' a provision of the Quran by a legal trick (*hiyal*) became a discipline in itself. Abu Hanifa, one of the greatest jurists of Islam, and the founder of the school of law which the overwhelming population of Muslims in India follow, was specially renowned for his skill in putting together the necessary inventions (*Goldziher, op. cit.*, pp. 57-65). Tricks were found to get around the Quran's prohibition of drinking, its injunctions about what kind of meat alone may be eaten, etc. (*Ibid*, pp. 57-63). A typical example from Schacht, one of the most thorough scholars of Islamic Law, will have to suffice:

For instance the Quran prohibits interest, and this religious prohibition was strong enough to make popular opinion unwilling to transgress it openly and directly, while at the same time there was an imperative demand for the giving and taking of interest in commercial life. In order to satisfy this need, and at the same time to observe the letter of the religious prohibition, a number of devices were developed. One consisted of giving real property as a security for the debt and allowing the creditor to use it, so that its use represented the interest; this transaction forms a close parallel to the sale with the right of redemption. Another, very popular, device consisted of a double sale (*bay'atan fi bay's*), of which there are many variants. For instance, the (prospective) debtor sells to the (prospective) creditor a slave for cash, and immediately buys the slave back from him for a greater amount payable at a future date; this amounts to a loan with the slave as security, and the difference between the two prices represents the interest; the transaction is called *mukhatara* or, more commonly, '*ina*'. Euphemistically, it is also called *mu'amala*, 'transaction' and the money-lender 'trader',

because traders also acted as money-lenders. This custom prevailed in Medina as early as in the time of Malik. There were hundreds of these devices, extending over all fields of the law of contracts and obligations, many of them highly technical, but all with a scrupulous regard for the letter of the law....

(Joseph Schacht, *An Introduction to Islamic Law*, Oxford, 1964, p. 79).

The provisions of the Quran on law can be discussed at great length. For the present two points are all we need to note. First, in contrast to the impression that is sought to be conveyed, the impression that Muslim personal law is one seamless garment, every bit of which is derived from the Quran, in fact only a very small part of the Quran deals with it, and the verses that deal with it cover only a small proportion of the subjects that today constitute Muslim personal law.

Second, several of the provisions on these matters have been added to and substituted by conventional devices from the very beginning.

The Sunna

THE SECOND ostensible source of the law—namely, the practice of the Prophet—presents even greater problems. In the case of the Quran we have at least since the days of Usman a text which is reliable. While there are several collections of narratives about what the Prophet said and did, there are the gravest doubts about their accuracy.

The Prophet had an overpowering and a magnetic influence on his people. They used to go to him for decisions and advice on all sorts of matters—the cosmos, beliefs, mode of prayer, sacrifice, what to eat and how, sex, dress, manners, property, law and a hundred other things. His spontaneous remarks on these matters were for them law.

After he died, specially because of the circumstances in which he died (on his deathbed he had asked for material to write something down, in all probability to indicate who should be the Khalifa; this was denied—on the apprehension, say the Sunni historians, that he might abrogate something vital of the Quran in his delirium; to prevent him from recording his decision that his son-in-law Ali should be the Khalifa, say the Shia historians), strife and contention began among the closest companions as well as among their followers. At the same time,

people farther and farther away from the heartland began to embrace Islam.

In all corners, whenever an issue arose the believers wanted to know what the Prophet had said or done about it, what his opinion or ruling had been. This was due both to the veneration in which he was held and to the fact that each contender, each disputant felt that the only way to justify his position was to trace it to the practice of the Prophet himself.

Such intense demand brought forth a ready supply. The *hadis*, the accounts or traditions of the Prophet, multiplied by the hundreds of thousands. Dynasties—the Ummayyads and following them the Abbassids who displaced them—had traditions manufactured to establish their right to rule and their virtues. Traditions turned up in which the Prophet was seen to have prophesied that a ruler with the name X or Y from place A or B would ascend to leadership and bring prosperity to the people. Traditions turned up to prove that the Prophet had certified the superiority of this place or that, of Syria in some, Basra in others, of Fas in the Maghrib, of Shershil in Algeria, of Qamuniya. Nor were these certificates confined to rulers and places. The great jurist Abu Hanifa—the founder of the Hanafite school of law that most Indian Muslims follow—was born about 70 years after the Prophet died. But to establish his pre-eminence his followers had no difficulty in discovering a tradition in which the Prophet had said, ‘In my community will rise a man called Abu Hanifa who will be the torch of the community.’

Alarmed by the torrent, the faithful then produced traditions in which the Prophet was shown to have forecast that after him many fabricators would circulate false accounts of what he had said or done and put words in his mouth to legitimise themselves and their ways, and to have warned that such fabricators would roast in hell. But these were followed by traditions in which, while he was seen to have prophesied the production of traditions all right, his attitude to the productions was represented as being more indulgent. In a typical tradition, for instance, he says, ‘After my departure, a number of sayings attributed to me will increase in the same way as sayings have been ascribed to previous prophets. What therefore is told to you as a saying of mine you will have to compare with the Book of God, and what is in accordance with it is by me, whether I have in fact said it myself or not.’

But what was 'in accordance with the Book of God' is precisely what the contenders differed about. The result was that the fabrication continued. In fact, the manufacturing of *hadis*, so long as one was doing so to enhance piety or adherence, itself came to be looked upon as a pious act. As a result of this 'pious fraud', as Goldziher correctly termed it, the stock of accounts about the Prophet's *sunna* went on multiplying. No wonder, the specialist on the *hadis*, Asim Al Nabil, surveying the scene about a century and a half after the Prophet, exclaimed, 'I have come to the conclusion that a pious man is never so ready to lie as in matters of *hadis*.'

Affairs reached an appalling state. Thus the compiler of the most revered collection—Bukhari—recorded that he had been led to sift the true *hadis* from the chaos by a dream in which he saw himself driving flies away from the Prophet's corpse.

He and the other compilers used the most elementary tests to winnow the material. Each tradition, for instance, is based on an *isnad*—a preface saying 'A heard from B who heard from C... that when K was with the Prophet, he heard him tell Y that...' But if it turned out that when C was alive B was already dead, the tradition was rejected as unreliable. Even though the tests were elementary in the extreme, and even though they were confined almost exclusively to an assessment of the *isnad*, the results of these diligent and pious compilers testify to what they found.

Thus Bukhari laboured 16 years, interrogating a thousand sheikhs living in faraway places, and compiled six hundred thousand traditions. Ultimately he included only, 7397 (on another account 7295) in his *Sahih*. And, as Guillaume points out, if the repetitions are eliminated, the number of distinct *hadis* is only 2762. That is, of every two hundred that Bukhari examined, he found *one hundred and ninety-nine* to be unreliable.

The experience of the other compilers was similar. Abu Daud examined five hundred thousand. Of these, even on those elementary tests, he was able to retain only 4800. And in regard to even this selection he states that he was including not just the authentic *hadis*, but also 'those which seem to be authentic and those which are nearly so'.

'Where such a preponderance of material is judged to be false,' records Guillaume, 'nothing but the successful application of modern canons of evidence can restore faith in the credibility of the remainder....' The problem doesn't of course end with the fact that such an

overwhelming proportion of the *hadis* had to be rejected. The ones that were retained and which now ostensibly form the basis of Muslim law are themselves riddled with the severest difficulties.

For instance, much depended on whether a transmitter was regarded as truthful or not. Of the 40,000 odd 'companions' by and through whom the traditions had been transmitted, Bukhari found only about 2000 to be reliable. The Shias, of course, reject all traditions that do not originate with Ali and the Prophet's family. But even among the Sunnis, assessments about the degree to which transmitters can be relied upon continue to differ to the widest possible extent. Thus, for instance, among the most prolific of transmitters is Abu Huraira, a constant companion of the Prophet for three years or so. A significant proportion of the traditions that figure in each of the great compilations—about a sixth in Bukhari's case—originate from him. Accounts about him range all the way from a stout defence, to his being hit with a whip by Umar, the second Khalifa and eminent companion of the Prophet, for transmitting fabrications, from explanations of how he probably heard and saw more of the Prophet than the others to his being threatened by Umar with banishment unless he stopped transmitting his concoctions.

Not only have such disagreements about the reliability of the individual transmitters continued, there have been equally vast disagreements about what should be done about the traditions transmitted by the person *after* evidence about the person's reliability or unreliability has been gathered. Thus, for instance, Bukhari and Muslim proceeded on the assumption that only those *hadis* should be incorporated in the corpus which had been transmitted on the authority of persons who were universally esteemed to be trustworthy. (As the facts about Abu Huraira indicate, Bukhari and Muslim themselves cannot be taken to have applied this rule with any strictness.) Abu Daud and Ibn Hanbal, on the other hand, proceeded on the opposite rule—that only those traditions should be rejected which had been transmitted by persons who were universally deemed to be unreliable.

The final problem is the predictable one. The traditions are contradictory. Some traditions say that the traditions themselves should not be written down, while others imply that they should—and Abu Daud reports one to the former effect and one to the latter, one after the other. Some imply that the traditions merely amplify and cannot override a verse of the Quran, others that a verse of the Quran cannot

abrogate a tradition. The compiler Tirmidhi is particularly diligent in listing contradictory *hadis*.

An entire discipline therefore had to be constructed to set out the principles by which flagrantly contradictory *hadis* may be 'reconciled'. The great Shafi's *Risala* devotes chapters to it.

Is it any surprise, then, to learn that even a man like Ibn Qutayba, one of the most zealous advocates of the school that insists on deriving every point possible of law from the traditions, concedes a greater role to *ijma*, in ascertaining the consensus of the community, than to looking up the relevant *hadis*, on the ground that 'the truth was more likely to be contained in the *ijma* than in tradition. The *hadis* is subject to many vicissitudes, due to the negligence of those handing it down, confused explanations, the abrogations which may have occurred, the unreliability of informants, the existence of two contradictory *hadis*... The *ijma* of the community is free from such vicissitudes.... This is the reason why people hand down *hadis* going back to the Prophet but follow in practice other ways.' That from a most zealous advocate, not of *ijma*, but of *hadis*! And we have already seen what happened to *ijma* as a basis of the law.

Now, all this and much, much more about the *hadis* has been established meticulously by a host of scholars. It can be easily looked up in widely available and well-known works of Goldziher (e.g., *Muslim Studies*, Volume II, Allen and Unwin, London, 1971, Original 1890), A. Guillaume (e.g., *The Traditions of Islam*, Oxford 1924, reprint Khayats, Beirut, 1966), Joseph Schacht (e.g., *The Origins of Muhammadan Jurisprudence*, Oxford, 1948), G.H.A. Juynboll (e.g., *The Authenticity of the Tradition Literature*, Leiden, E.J. Brill, 1969) or even in Hughes' *Dictionary of Islam* and *The Encyclopaedia of Islam*.

We look up none of it. Instead, as our most widely used textbook does, we just keep chanting in blissful ignorance, 'As a source of law *hadis* is as binding as the principles of the Quran....'

Conventional, Not Divinely Ordained

ABU HANIFA, who founded the Hanafite school of law, placed little reliance on the traditions. His disciple, Abu Yusuf, whose appointment by Harun Al Rashid as the Chief Qazi over Malik ensured the eventual predominance of the Hanafite school, placed as much reliance on them as on other sources of the law. Inclinations and decisions

differed. The point is that, like everything else connected with the traditions—their collection, the criteria by which they would be accepted or rejected, the rules by which the contradictory ones would be reconciled etc.—the decision about the extent to which they would form the basis of law was a conventional one, a decision made by ordinary mortals. It was not Allah's command, nor that of the Prophet.

What was true of the traditions was equally true about the other bases of the law. Abu Hanifa would emphasise reasoning, logical deduction, analogy, consensus of the learned. Ibn Hanbal would insist that the Quran and the traditions alone must form the basis.

Even after the role of a particular source of law was recognised, the widest possible differences arose and persisted about every aspect of it. Consider the third source—*ijma*.

Can it settle questions on all matters of faith and law or only on the latter? Can it settle all questions in relation to either or only questions on which there is no clear verdict in the Quran and the *hadis*? Is the consensus to be of the community or only of the learned? Must the agreement be unanimous or will the opinion of the majority do? Is it to be the opinion of the community or the jurists of one region or of the entire world of Islam? Does the consensus become effective as soon as it is arrived at or only after all those whose opinion has been sought die without changing their opinion? Must all who are consulted express their consent actively or can we presume that their silence is consent? Who are to be excluded from the process—infidels only or heretics also? Only those heretics who proclaim and propagate their views or all? All who violate the Shariat or only those who flagrantly violate it?

Is the *ijma* of the companions alone binding? Who are to be reckoned as the companions—only the ten that the Prophet specifically certified would go to heaven, all who lived and fought along with him, or all the 30,000 who lived in Medina at that time? If the companions themselves disagreed on a matter, can law be established by the consensus of a community or the jurists? Would that not amount to certifying the heresy that some of the Prophet's companions were misled?

In arriving at a consensus, is a generation limited to choosing one of the positions from among those that have already been adopted by previous generations or can it strike out completely on its own?

Any standard, even reasonably comprehensive work on the subject (e.g., M.A. Khadeer, *Ijma and Legislation in Islam*, Shivaji Press, Secunderabad, 1974) will establish two points: on every single question

of this kind the answers ranged from the most emphatic 'yes' to the most emphatic 'never'; second, the answers were arrived at conventionally by ordinary men, they were not ordained by Allah or the Prophet. And yet they determined the very basis of the law.

As a result of differences on such questions, nineteen schools of law grew up. Eventually, four survived. The decision to adhere to one school rather than another too was a conventional one—influenced as it was by the time and place in which one grew up. There was no divinely ordained basis for adhering to one school rather than another. Regions, even individuals, differed as to their preferences and many changed from one school to another. Goldziher recalls the case of a 12th century theologian who earned the appellation 'Hanfash' because he belonged successively to three of the schools.

Even within a school, convention rather than divine ordinance rules in practice to this day. Consider what is to be done when the three principal authorities within the Hanafite school differ. Here is how our textbook summarizes the practice in India: where there is a difference of opinion between Abu Hanifa, the founder, and his two principal disciples—Abu Yusuf and Imam Muhammad—the opinion of the disciples is to be preferred; where the two disciples disagree, the opinion of Abu Yusuf is to be preferred; where the two disciples differ from Abu Hanifa and also among themselves, the opinion of Abu Yusuf is to be preferred (cf. *Mulla's Principles of Mohamedan Law*, *op. cit.*, p.27). Now, these are just conventional rules of thumb—and yet today they constitute the very foundation of Muslim personal law. There is nothing divinely ordained about them. In fact, the most fundamental rule of our courts—that they will look not so much at the original text of the Quran and the *hadis* but at what the textbooks say—is itself nothing but a rule of convention. It has no basis in the Quran or the *sunna*, to say nothing of course of its having any basis in our Constitution or our laws, and yet it determines the entire way in which Muslim Law is administered today. But should our courts or legislatures so much as talk of re-examining this rule, the cry is sure to go up that they are interfering in the Shariat, all of which is divinely ordained, etc.

But we are getting ahead of the argument. We should return to the Quran and the *hadis*.

The Stamp of Time and Place

THE ARGUMENT thus far confronts us with a cruel problem. If we acknowledge the fact that the *hadis* are unreliable, we are left with nothing but 70 odd verses on which to build the entire edifice of personal law. And these verses, we have already seen, are not an altogether adequate foundation for it.

Let us now look at the matter from the opposite point of view. Let us totally disregard all the evidence about the unreliability of the *hadis* and, instead, proceed in the belief that everything narrated in the canonical collections is completely trustworthy. What happens then?

One is struck first by the fact that as with several specific injunctions of the Quran, Islamic society has disregarded or gone beyond the *sunna* of the Prophet. Several examples can be given. One, this one from the law of evidence, will have to suffice.

The Prophet judged matters exclusively by oral testimony. Often, as reported in several traditions, he settled a matter solely on the basis of one witness swearing to a fact on oath. Another method was for the contending parties to accuse and curse each other. Thus, for instance, recall the rule specified in the Quran that there must be four witnesses 'to the fact' of adultery to substantiate the charge (4.19). But when a husband accuses his wife of adultery, and there are no witnesses, all he has to do is to swear to the charge four times and, on the fifth time, ask that the curse of Allah be upon him if he be lying. The wife, if she wants to contest the charge, must similarly deny it four times on oath and, the fifth time, call down the curse of Allah upon herself if her husband has spoken the truth (*Quran*, 24.6,7). (The denial saves her from the charge of adultery, but the marriage stands automatically dissolved, and the wife loses all her rights. But to that we will revert later). The Prophet on occasion thought mutual cursing to be a fit method for settling not just legal but theological matters too. Thus when differences arose between him and the Christians of Najrah about the divinity of Jesus, he suggested that they curse each other and the view of him whose curses worked would prevail (cf. *The Life of Muhammad*, translation of Ishaq's *Sirat Rasul Allah* by A. Guillaume, OUP, Karachi, 1978, pp. 270-7).

Now, this is the *sunna* on what kind of evidence to entertain—oral testimony, often that of only one witness, mutual imprecation, no cross-examination, no written documents, etc. In fact, over the

centuries in the Islamic world as much as elsewhere, written documents have come to take precedence over oral testimony. They are examined as elsewhere for veracity, consistency, etc. just as cross-examination of witnesses has been introduced (on all this see, Joseph Schacht, *An Introduction to Islamic Law*, *op. cit.*, for instance, Chapter 11, 'Theory and Practice').

That is the first thing that strikes one if one proceeds on the assumption that the *hadis* are totally and completely reliable: they may be a faithful record of the Prophet's *sunna*, but the Islamic world has grown beyond them in practice.

Next, one is struck by the fact that much of what is said and prescribed in the traditions is so obviously dated, it so manifestly bears the stamp of the time and place in which the Prophet and his companions moved, it so obviously reproduces beliefs of that time, it so embarrassingly reflects the fact that the information available then was limited, that one can't quite affirm that one will live by and only by the prescriptions of the *hadis*.

Scholars have shown how the institutions that the Prophet prescribed, how the norms he laid down were derived from the compulsions of a medieval, part-settled, part-nomadic, desert tribal society. The point can be illustrated with even greater ease by listing examples from other spheres of knowledge and life, examples that are so obviously dated that no extensive argument or documentation is required to establish that they reflect, not eternal verities, but the information, the beliefs, in many cases the superstitions and folklore then current.

Allah, we are told, created the heavens without any visible pillars and put mountains on the earth, as paperweights it would seem, 'lest it shake with you.' (*Quran*, 31.10) The Prophet certifies that at sunset the sun goes and prostrates itself underneath the Throne of Allah and, next morning, it takes Allah's permission to rise again. The permission is granted ordinarily, says the Prophet, but a time will come when 'it will be about to prostrate itself but its prostration will not be accepted, and it will seek permission to go on its course, but it will not be permitted, but it will be ordered to return whence it has come and so it will rise in the West,' and this, he certifies, is what is meant by the Statement of Allah that the sun will run its course for the term that has been fixed for it by the Allah's decree (*Bukhari*, 54.421). On the authority of the companions, the traditions certify that the sun and the moon move in a circle, 'They move like the hand-mill,' and that Allah

has created the stars for three purposes—to decorate the sky, to guide travellers and as missiles to stone the devils with (*Ibid*, 54.3 & 4).

Notions about day-to-day occurrences are equally quaint. The Prophet says,

When you hear the crowing of cocks, ask for Allah's Blessings for [their crowing indicates that] they have seen an Angel. And when you hear the braying of donkeys, seek refuge with Allah from Satan for [their braying indicates that] they have seen Satan. (*Bukhari*, 54.522)

The Prophet certifies that the rats are Israelites who had got lost. And his proof is straightforward. The Israelites were forbidden to eat the meat or drink the milk of camels. They were, however, allowed to eat the meat and drink the milk of sheep. The Prophet says that the Israelites who had got lost

Were cursed and changed into rats, for if you put the milk of a she-camel in front of a rat, it will not drink it, but if the milk of a sheep is put in front of it, it will drink it. (*Bukhari*, 54.524)

These could have been only a few of the Israelites. The generality must have become apes and swine. The Quran twice reports how, for their transgressions and contumacy, Allah brought down the curse upon them, 'Be ye apes, despised and rejected.' (*Quran*, 2.65, 7.166) At another place it reports that He changed them into 'apes and swine'. (*Quran*, 5.65)

Bukhari etc. have entire 'Books' on the Prophet's verdict about what this dream means or that, the general theme being that good dreams are from Allah and bad ones from Satan (for instance, *Bukhari*, 87.113-15). To ward off the effects of the latter, one must seek refuge in Allah from Satan, and spit to the left (once in some accounts, thrice without saliva in others, e.g. *Bukhari*, 87.115, 124, 133). There is a corresponding differentiation between sneezing, which is said to be from Allah, and yawning, which is said to be from Satan (e.g. *Bukhari*, 72.242, 245).

The injunctions about medicine too bear the stamp of what was thought and believed then. Sickness is an expiation for sins (e.g. *Bukhari* 70.544). It is also the sign of Allah's favour, for He shall

remove it (*Ibid*, 70.547-51,571). Diarrhoea, the Prophet says, should be cured with honey (*Bukhari*, 69.588,614; *Muslim*, 5492), pleurisy with sea or Indian costus and olive oil (e.g. *Muslim*, 5487-8), sniffed as an incense. The Indian qust cures seven diseases from throat trouble to tonsilitis (e.g. *Bukhari*, 71.596, 613, 616). Black cumin or *Nigella* seeds are said to be a cure for all diseases except death. (*Bukhari*, 71.591; *Muslim*, 5489-90) The dust of Medina mixed with the saliva of pious Muslims cures disease, ailment or 'any injury' (e.g. *Muslim*, 5444). Fever, we are told repeatedly, is 'due to the vehemence of the heat of Hell', and so the cure is to 'cool it with water.' (*Bukhari*, 71.619-22; *Muslim*, 5476-85)

Although he advises that a person in an area struck by plague should not leave it and persons elsewhere should not go to it, and that one should not mix healthy cattle with unhealthy ones, the Prophet states categorically that there is neither infection nor contagion (e.g. *Bukhari*, 71.615, 665, 667; *Muslim*, 5507-16). Much is said about the effects of the evil eye and how they are to be neutralised. Spells and chants are prescribed as cures for the evil eye, of course, but also for skin eruptions, scorpion stings, bleeding (e.g. *Bukhari*, 71.632-48; *Muslim*, 5428-57).

What should one do if a house-fly falls into something one is drinking? 'Dip all of it' in the drink, the Prophet enjoins, 'and then throw it away, for in one of its wings is a disease and in the other there is the healing,' that is, the antidote to the poison and cure for the disease. (*Bukhari*, 54.537, 71.673)

Examples of this kind can be multiplied many times over. (And of course they are not exclusive to these texts or to Islam.) For our purpose two points are relevant. First, the knowledge they convey is clearly dated—they reflect the beliefs of and the information available in the Middle East 1400 years ago. Although these are said to be the words and opinions of the Prophet, no one would assert that they are eternal truths.

The second point is more crucial: there is nothing in the Quran or the *hadis* to say that the dicta on these matters are 'less eternal' than, say, the dicta on polygamy, or divorce, or alimony. Why is it that while we seem quite at ease in acknowledging that the dicta on these matters may be dated, we revolt at the suggestion that the prescriptions on marriage, divorce etc. may also reflect no more than the conditions, notions, requirements of eighth century Arabia?

And if authority must be sought, there is, as always, the well-known tradition set out in the standard compilations like *Muslim* and *Mishkat*. When the Prophet was in Medina, he saw the people fertilising date trees in a particular way. He asked them why they were doing so. 'It is an ancient custom,' they said. He advised that the yeilds may be higher if they did not do so. They followed his advice. The trees bore little fruit. When they complained to him, he said, 'I am no more than man; when I order you anything regarding religion, receive it, and when I order you about the affairs of this world, then I am nothing more than man.'

Now, if growing date-trees is an 'affair of this world', why is alimony not? Or marriage? Or divorce? Especially in Islam, where marriage is not a sacrament at all, but a contract?

I mention the *hadis* merely to make the point that there is no way of distinguishing between the traditions as well as the verses of the Quran on the basis of *the subject* they deal with. If they are sacrosanct and binding on one set, they must be deemed to be equally sacrosanct and binding on all. But reform isn't just a matter of citing a convenient *hadis*. For each *hadis* the reformers can cite, the fundamentalists can cite five. And there are different versions to contend with. In the date-tree *hadis* for instance, the phrase 'when I order you on the affairs of this world' is replaced in one version by 'when I order you on the basis of my opinion.' So, the theologian will argue, while on date-trees we can proceed independently of the Prophet's opinion—there being no command of Allah in the Quran on the subject—we cannot do so in the case of marriage etc. We can't win by quotation mongering. But we are anticipating the argument.

A Seamless Garment

WE NOTICE that if we acknowledge the traditions to be unreliable, then we are left with little on which to base the claim that Muslim law is divinely ordained. On the other hand, if we insist that, like the Quran, the texts are trustworthy, so much of what they say is so manifestly dated that one cannot but agree that all of it has to be re-examined in the light of the knowledge that has become available since.

If, however, just as in our piety we decided to set aside everything that modern scholarship has revealed about their reliability, we now shut our eyes to all knowledge that shows the traditions to be dated,

and we continue to maintain instead that the Quran and the *hadis* are eternally excellent and are a seamless garment, not one thread of which can be pulled out or replaced, we end up with an even graver problem.

For we must then declare how far back we want to go in restoring the law of Allah and the Prophet. The law on evidence, on punishments, on apostasy, on *fi*hah? If God's words on polygamy are to be construed as a permission-in-perpetuity, what about His words on slavery, on concubines?

A few examples will show how untenable is the position that we land ourselves in if we insist on the law and the injunctions being eternal, excellent for all time, and all of a piece.

The scale of punishments is medieval. Allah enjoins, 'So to the thief, whether male or female, cut ye off their hands in recompense for their doings. This is a penalty by way of warning from Allah Himself, and Allah is Mighty,Wise,' unless the thief repents and turns to Allah, in which case Allah will 'turn to' him in compassion. (*Quran*, 5.41-2) The Prophet makes the command specific: 'The hand of a thief should be cut off for stealing a quarter of a dinar,' 'Allah curses a thief who steals an egg, for which his hand is to be cut off, or steals a rope, for which his hand is to be cut off.' (*Bukhari*. 81, 781-91) As for sincere repentance, the traditions seem to imply that the punishment having been carried out in this world, *that* part is up to Allah in the next, for the Prophet says, 'And whoever commits any of the above crimes and receives his legal punishment in this world, that will be his expiation and purification. But if Allah screens his sin, it will be up to Allah who will either punish or forgive him according to His wish.' (*Ibid*, 793)

We have already noted that a woman against whom four witnesses testify that she has committed adultery must on Allah's command be walled in till she dies, 'or God appoints for her a way' (*Quran*, 4.15), or along with the man be flogged with a hundred stripes. (*Quran* 24.2) 'Let not compassion move you in their case,' Allah stresses, 'and let a party of the believers witness their punishment'. (*Ibid*) By the Prophet's example both must be stoned to death (e.g. *Bukhari*, 82. 803-10, 814-16). Even at that time, there were objections that the Quran did not ordain stoning, but Umar (and Aisha, as we have seen earlier) testified that there *was* a verse to that effect which was not

now in the Quran (e.g. *Bukhari*, 82.816). The Prophet ordered persons to be stoned to death even when there were no witnesses and the persons were confessing on their own. (*Ibid*, 805-6, 810, 815) The stonings were on occasion carried out in the tiled courtyard right in front of the Prophet's own mosque, and in the place where the Id prayers used to be held. (*Ibid*, 809, 810)

Thus, the injunctions of Allah are clear, as is the *sunna* of the Prophet. Should the punishment be revived and should it be meted out on the type of evidence that was found to be acceptable then?

Similarly, today we have freedom of religion. This includes the right not just to practise my religion but to practise the religion of my choice. But by Allah's command, and by the Prophet's example, he who changes his religion from Islam must be put to death. Allah's commands are emphatic. Talking of disbelievers, he says that no Muslim should take them either as friends or helpers until they embrace Islam,

Then, if they turn their backs, take them, and slay them wherever you find them. (*Quran*, 4.91)

The Prophet is equally emphatic: 'Whoever changes his Islamic religion', he says, 'kill him.' (*Bukhari*, 84.57)

And the mark, not of so grave a thing as apostasy but of a mere deviation which merited such punishment, could be quite innocuous. Here, for instance, is the *hadis*: 'Disagreement and division will arise among my people,' the Prophet forecasts. 'Some will speak well but do evil; they will recite the Quran but it will go no farther than their throats; they *will* swerve from their religion as an arrow goes through the animal shot at and will not return till an arrow comes back to the place where it was strung. They are the worst of men and animals. Blessed are they who kill them and are killed by them! They summon people to God's Book, but they have no part with us. He who fights them, is nearer to God than they!' God's Messenger was asked what mark they had, and said it was a clean-shaven face. (*Mishkat al-Masabih*, Muhammad Ashraf; Lahore, Volume 1, pp. 753-4; on the first part, see also, e.g. *Bukhari*, 84.64, in which the Prophet exhorts, 'So wherever you find them, kill them, for whoever kills them shall have reward on the day of resurrection.')

His actual practice in this was guided by Allah's injunction that the

punishment for those who fight against Allah and His Messenger, those who go about creating disorder and do not repent before they are vanquished, is that

They shall be slaughtered or crucified, or their hands and feet shall alternately be struck off, or they shall be banished from the land. (Quran, 5.37-8)

Recall the incident cited earlier. Some persons from the tribe of Ukl came to the Prophet and embraced Islam. The climate of Medina did not suit them. The Prophet ordered them to go to the herd of milch-camel and drink the milk and urine as medicine. After recovering from their illness, they reverted from Islam, killed the shepherd and ran off with the camels. The Prophet had them caught. He then ordered their hands and legs to be cut off, their eyes to be branded with heated pieces of iron. He ordered that the cut hands and legs should not be cauterised so that they bleed to death. 'And when they asked for water to drink,' records the *hadis*, 'they were not given water.' (*Bukhari*, 82.794-7; *Muslim*, 4130-7)

Thus, once again the injunctions of Allah are unambiguous and emphatic. So are the injunctions of the Prophet and his *sunna*. Should these replace the freedom of religion that our Constitution guarantees to every Indian? The answer cannot but be 'Yes' if we maintain that Islamic law is one seamless whole, and altering any part of it is desecration of the religion.

So much for what should constitute a crime and what scale of punishment it should invite. How and by whom should the punishment be carried out? For instance today, enforcing criminal law is the function of the State. But the Quran and the *sunna* of the Prophet enshrine retaliation as a principle. We have already seen how in the Quran Allah declares,

O believers, prescribed for you is retaliation, touching the slain; freeman for freeman, slave for slave, female for female. But if aught is pardoned a man by his brother, let the pursuing be honourable, and let the payment be with kindness. That is a lightening granted you by your Lord, and a mercy; and for him who commits aggression

after that—for him there awaits
 a painful chastisement.
 In retaliation there is life for you,
 men possessed of minds; haply you
 will be godfearing.

(*Quran*, 2.173-5)

And, therefore, says the Quran,

The holy month for the holy month;
 holy things demand retaliation.
 Whoso commits aggression against you,
 do you commit aggression against him
 like as he has committed against you;
 and fear you God, and know that God is
 with the godfearing.

(*Quran*, | 2.190)

Allah reiterates what He says He has already sent down in the Torah—the command of equal retribution:

And therein We prescribed for them:
 ‘A life for a life, and eye for an eye,
 a nose for a nose, an ear for an ear,
 a tooth for a tooth, and for wounds
 retaliation’; but whosoever forgoes it
 as a freewill offering, that shall be for him
 an expiation. Whoso judges not
 according to what God has sent down—
 they are the evildoers

(*Quran*, 5.49)

He repeatedly faults the Jews for not adhering to His injunctions in this as in other matters.

Accordingly, the Prophet was scrupulous in enforcing ‘an eye for an eye’, etc. and in upholding the right of the family of the victim to either carry out the punishment in retaliation or, as allowed by Allah (*Quran*, 2.178, 5.49), transmute it into blood-money. The incidents are set out in the *hadis*, although in one the Prophet is seen as himself killing between two stones a person named by a dying victim as being the assaulter (e.g. *Bukhari*, 83.15-24).

Notice that, in all probability, the Quran and the Prophet were merely continuing the practice of seventh or eighth century Arabia. It

can even be said that in a way they were humanizing it. We learn in the traditions, for instance, that among the Israelites, blood-money was not permitted, and the only code was 'an eye for an eye'. The Quran and the Prophet are credited in the *hadis* for introducing the option (e.g. *Bukhari*, 83.20). But society has evolved. Must we today revert to retaliation as the operational principle, to 'an eye for an eye' as the working scale? The answer cannot but be 'yes' if we insist that the injunctions of the Quran and the practice of the Prophet are one seamless whole.

Consider next, not just a crime, or an operational principle, or punishment in a specific case, but an entire social institution. Slavery was common in Arabia at that time. The Quran and the Prophet recommended that Muslims treat their slaves well, that they refrain from forcing their female slaves into prostitution. They made freeing individual slaves a virtuous act, an act that could be the expiation for a few transgressions. The Quran even envisaged the possibility of a Muslim freeing his slave and after she had accepted the faith, etc. marrying her.

But both the Quran and the Prophet assumed that slavery as an institution would continue. For instance, the Quran, in laying down that a Muslim may have up to four wives at a time, often refers in addition to slave or female concubines that a man may keep—concubines on whose number, of course, no restriction is placed. (*Quran*, 4.3, 28, 29, 23.3-6)

It isn't just that slavery is assumed to continue and that nothing is said against the institution as such. The *sunna* of the Prophet, the second and co-equal source of Muslim law, for instance, lays down that the slave must serve his master diligently. 'When a slave acts sincerely towards his master and worships God well,' the Prophet says, 'he has a double reward.' 'How excellent it is,' he says, 'for a slave to be taken in death by God when worshipping his lord well and obeying his master! How excellent it is for him.' The master, he says, may beat the slave, though he should avoid hitting his face. A slave who runs away, he says, is an infidel. From all this follows naturally the suspension of the general law of equal retribution. Thus, for instance, a Muslim is to be killed if he unlawfully kills a Muslim, but not if he kills a slave (cf. for instance, *Muslim* 3. 4097-101; *Mishkat*, *op. cit.*, 2, pp. 714-5, 813; *Hughes' Dictionary*, *op. cit.*, p. 599).

Are we then to reintroduce or permit the continuance of this social institution? If the law is to remain as it is laid down by the Quran and the Prophet's practice, we must indeed.

Jihad

AS A FINAL example—of the scores and scores that can be given—consider not just a specific transgression, a specific punishment, a specific rule of operation, or even a specific institution. Consider what the Quran and the *sunna* of the Prophet enjoin as a major, overriding duty, a duty that affects the relations of Muslims with all others in the society or State in which they happen to live—the duty of *Jihad*, of engaging in Holy War, so as to convert the universe into Dar-al-Islam, the Land of Islam.

At the turn of the century, when the Muslim intelligentsia was very keen to erase from the British mind the memory of 1857, when it wanted to replace the image of Muslims as 'rebels' by the image of Muslims as the most loyal subjects, Sir Syed Ahmed Khan Bahadur, C.S.I. and his associates were at pains to underplay this mandatory duty (as a representative of this genre see Moulavi Cheragh Ali, *A Critical Exposition of the Popular 'Jihad'*, showing that the wars of Mohammed were defensive; and that aggressive war, or compulsory conversion is not allowed in the Koran, Thacker, Spink & Co., Calcutta, 1885). It is clear in retrospect that such works were mere apologetics, called for by time and circumstances.

On few things does the Quran lay down the law as forcefully and unambiguously, on few things does it repeat its command as often as on the duty to engage in *Jihad*, or the great merits that accrue to the believer from doing so.

When the nascent movement was in difficulties, for instance, in Mecca and in the initial years in Medina, Allah recommended an indulgent tolerance. 'Say', He commanded,

O unbelievers,
I serve not what you serve,
and you are not serving what I serve,
nor am I serving what you have served,
neither are you serving what I serve.

To you your religion, and to me my religion! (*Quran*, 109.1-5)

Or, as in 2.256, 'Let there be no compulsion in religion.'

Once the Prophet's hegemony was established in Medina, however, Allah's commands become minatory. The *Quran* as a whole bears the stamp of these days. It divides the world into believers and non-believers; it states again and again that the non-believers are incorrigible as God has deliberately led them astray; that, even after doing so, 'If God had willed He would have avenged Himself upon them,' but that He has left the task to the believers, so that 'He may try some of you by means of others' (*Quran*, 47.5-7); that therefore it is the duty of the believer to 'slay them wherever he find them', to make 'a wide slaughter among them', to vanquish them till Islam reigns all over; that in doing so the believer is only hastening the chastisement that the unbelievers have themselves invited upon themselves; that by doing so he assures himself a place in Paradise.

As you read the following representative verses from the *Quran*, notice two things. Notice how emphatic, unambiguous are Allah's commands. Notice also that they are far more frequently repeated than the commands on, say, alimony. If we insist that the injunction on alimony—and it is one that can be derived only by implication—cannot be altered, must we conclude that in this age and place, as much as in every other, every believer will be living by the injunctions on *Jihad* too?

The commands to engage in *Jihad* are indeed the leitmotiv of the *Quran*. Do not be the aggressor, says Allah, for Allah does not like aggression (though on this see below), but fight the unbelievers,

And kill them wherever ye shall
find them and eject them from
whatever place they have ejected
you; for civil discord is worse
than carnage... fight therefore
against them until there be no
more civil discord, and the only
worship be that of God; but if
they desist [i.e., if they give in] let there be
no hostility, save against the wicked. (2. 186-9; see also 8.40)

'O believers', Allah commands,

fight the unbelievers, who are near to you,
and let them find in you a harshness;
and know that God is with the God-fearing. (9.125)

'Now, if the hypocrites do not give over', He says,

and those in whose hearts there is sickness,
and they that make commotion in the city,
we shall assuredly urge thee against them
and then they will be thy neighbours there only a little;
cursed they shall be, and wheresoever
they are come upon they shall be seized and slaughtered all—
God's wont with those who passed away
before; and thou shalt find no changing the wont of God.
(33.60-4)

'O Prophet', Allah commands,

struggle with the unbelievers and
hypocrites, and be thou harsh with them;
their refuge is Gehenna—an evil
homecoming. (9.74)

Do not be like the Israelites, Allah admonishes the faithful, who did not fight even after God had granted their wish of having a king who would lead them in battle. (2.244-9) Instead, remember,

Prescribed for you is fighting, though it be hateful to you;
Yet it may happen that you will hate a thing
which is better for you; and it may happen that you
will have a thing which is worse for you;
God knows and you know not. (2.212)

Fighting in Allah's way is the bargain that you have made with Allah, the believer is told, the bargain that will guarantee you a place in paradise; therefore rejoice in fulfilling your part of it, for remember, Allah will certainly fulfil His part:

God has bought from the believers their selves,
 and their possessions against the gift of Paradise;
 they fight in the way of God; they kill, and are
 killed; that is a promise binding upon God
 in the Torah, and the Gospel, and the Koran;
 and who fulfils his covenant better than God?
 So rejoice in the bargain you have made with Him;
 that is the mighty triumph. (9.113)

For this reason exhortation follows exhortation, command follows command—sell the present life for the life to come; fight in the way of God, against Satan's way, against the way of the idols; in doing so a mighty wage awaits you whether you slay or are slain; obey sincerely for God knows your secret thoughts (for a typical exhortation of this kind, see, *Quran* 4.70-87).

The duty to vanquish the non-believers, to annihilate their way, is urgent, imperative, indeed inescapable, says Allah, because the non-believers are completely and irrevocably incorrigible. There just is no alternative to fighting and subduing them. This assessment of those who do not agree with its message is special to the Quran, and we should see how emphatic and inescapable is the duty that follows from the assessment. Asks Allah,

What do you desire to guide him
 whom God has led astray?
 Whom God has led astray, thou wilt not find for him a way.
 (4.90)

The design of the unbelievers, He says, is that 'you should disbelieve as they disbelieve, and then you would be equal.' (4.91; similarly, see 4.142.) Therefore, 'O Messenger', Allah exhorts,

let them not grieve thee
 that vie with one another in unbelief,
 such men as say with their mouths, 'we believe',
 but their hearts believe not....
 Whomsoever God desires to try,
 thou canst not avail him anything with God.
 Those are they whose heart God desired not

to purify; for them is degradation
in this world; and in the world to come,
awaits them a mighty chastisement.... (5.45)

‘God guides not the people of the unbelievers,’ the Quran says. In fact, ‘What has been sent down to thee from thy Lord will surely increase many of them in their insolence and unbelief.’ ‘So grieve not’, it says again ‘for the people of the unbelievers.’ (5.70-5) The Quran repeatedly recalls how Allah had sent clear guidance to the Israelites and how they perverted it. This too is Allah’s design, it says :

Had God willed, they would not
have done so; so leave them to
their forging. (4.135-9)

‘Surely the worst of beasts in God’s sight’, it says,

are those that are deaf and dumb and do not understand.
If God had known of any good in them
He would have made them hear; and if
He had made them hear, they would have turned away,
swerving aside. (7.20-5)

The idolators, of course, say that God is the one who must have willed them to be idolators. Why then should they be punished for it? The question, a very pertinent one, is stamped out—‘Even so the people before them cried lies till they tasted Our might’—and the believers are exhorted to repeat, ‘To God belongs the argument conclusive, for had He willed, He would have guided you all.’ (cf. 6.149-51; and also 14.35-45)

Therefore, the unbelievers have been made that way by Allah Himself. You *cannot* make them learn. They are Allah’s enemies and yours. (8.42) They have been made that way so that your devotion to Allah may be tested by what you do to them (47.5-7). A terrible chastisement awaits them in the hereafter, but the unbelievers themselves hasten it and invite it upon themselves right here through your hands:

What, have they not journeyed in the land

so that they have hearts to understand with
or ears to hear with? It is not the eyes
that are blind, but blind are the hearts within the breasts
And they demand thee to hasten the chastisement....

(22.45-6)

As Allah has ordained the chastisement, as the unbelievers themselves hasten it upon themselves, your duty is clear. Ask them to embrace Islam. If they do not, then 'make a great slaughter among them,' 'slay them wherever you come on them.' Tie up the remaining securely, and then either kill them or set them free for ransom. Such are the blood-curdling duties that the Quran enjoins. 'If they withdraw from you,' it says,

and do not fight you, and offer you
peace, then God assigns not any way to you against them....
If they withdraw not from you, and
offer you peace, and restrain their hands
take them and slay them wherever you come on them;
against them We have given you a clear authority. (4.93)

(For similar commands see *Sura* 8; for instance, 8.70-6)

Indeed, Allah, as we have seen, is specific. 'This is the recompense,' the Quran says, for 'those who fight against God and His Messenger, and hasten about the earth to do corruption there,' and who do not repent 'before you have power over them':

They shall be slaughtered, or crucified,
or their hands or feet shall alternately
be struck off, or they shall be banished
from the land.... (5.37-8)

'When you encounter the infidels,' enjoins Allah,

strike off their heads till ye have made
a great slaughter among them, and of the
rest make fast the fetters.
And afterwards let there either be free dismissals or ransomings,

till the war hath laid down its burdens. Thus do....

(47.4-5)

Free dismissals or ransomings, thus are allowed, but *after* 'a great slaughter' has been made among them. 'It is not for any Prophet,' Allah reiterates, 'to have prisoners until he makes a wide slaughter in the land.' The reason is plain: 'You desire the chance goods of the present world' in the form of ransom, Allah admonishes, 'and God desires for you the world to come; and God is All-mighty, All-wise.' (8.68)

Thus, the fount of Muslim law most emphatically prescribes *Jihad* as a major duty. Bukhari, Muslim and the other compilers devote entire 'books' to recording how the Messenger of Allah followed these commands. As far as Muslim law is concerned, therefore, the injunction is twice reinforced.

'*Jihad* in the way of Allah! *Jihad* in the way of Allah,' we hear the Prophet proclaim, is what 'elevates the position of a man in Paradise to a grade one hundred [higher] and the elevation between one grade and the other is equal to the height of the heaven from the earth.' (*Muslim*, 4645) '.... I love to fight in the way of Allah,' he declares, 'and be killed, to fight and again be killed, and to fight again and be killed.' He declares that if only he had the means, or his fellow-believers themselves had the means, he would equip all of them for *Jihad*. (*Muslim*, 4678-83, *Bukhari*, 52.54) 'Who is the best of men?' the Prophet is asked. 'A man who fights in the way of Allah spending his wealth and staking his life,' he affirms. (*Muslim*, 4652-7; *Bukhari*, 52.45) Every injury to an unbeliever tots up a meritorious deed for the faithful, the traditions recall Allah saying (*Bukhari*, 52.15,16) 'A man came to Allah's Apostle,' the *hadis* records, 'and said, "Intrust me to such a deed as equals *Jihad* [in reward]." He replied, "I do not find such a deed"....' (*Bukhari*, 52.44)

The *hadis*, the second and co-equal source of Muslim law, are in raptures about the rewards that accrue from *Jihad*—booty in this world (this apparently had not been legal at that time, the Prophet made it so) and Paradise in the next. Fighting even once in *Jihad* brings rewards greater than all this world and all that is in it. (*Muslim*, 4639-44; *Bukhari*, 52.50-2) No one who dies and receives some good from Allah in the hereafter would ever want to return to this world, the Prophet says, even if he were offered the whole world and all that is in it as an inducement, except for the one who has been

martyred in *Jihad*. So great will be the honour that he will receive from Allah that he would desire to return to this world and be killed ten times in the cause. (*Muslim*, 4634-8; *Bukhari*, 52.53)

As the duty is an overriding one, all means are permissible. 'War is a strategem,' the Prophet says, 'War is deceit.' (*Muslim*, 4311-12, 4436; *Bukhari*, 52.267-9) Thus, one may lie, one may kill the enemy while he is asleep, one may kill him by tricking him (e.g. *Bukhari*, 52.264-5 A, 270-1, 248-55).

The believers are told to desist from the wanton cruelty that might create aversion to Islam, that might provoke unnecessary hostility, that might destroy what could be useful. But all these things are to be viewed from a utilitarian standpoint. Thus, one should avoid slaughtering women and children, unless it happens in the exigencies of the assault (e.g. during a night raid). When a group surrenders agreeing to have its fate decided by a companion of the Prophet, the latter sends for him and asks him to decree the fate of the captives. 'I decide that the fighting men be killed and that the offspring be taken into captivity,' he declares. 'You have given regarding them,' the Prophet compliments him, 'the decision of a King', 'God's decision'. (e.g. *Mishkat*, *op. cit.*, 2, pp. 840-1)

There are accounts and accounts of spoils, of quarrels over them, of women being taken and used. Thus the great Imam Malik, in discussing the permissibility or otherwise of coitus interruptus, records the *hadis*:

Ibn Muhairiz reported: I went to the mosque and found Abu Said Khudri sitting there. I asked him about *azl*. He said: We went with the Apostle of Allah (may peace be upon Him) to the Battle of Bani Mustaliq and there we seized some women of the enemy as captives. We were moved to passion and felt it difficult to abstain. At the same time, we desired to sell those women and obtain money; we, therefore, intended to do *azl*. We then thought that as the Apostle of Allah (may peace be upon Him) was present, it would be undesirable to do so without referring the matter to him. We asked him and He said: 'There is no harm, for whatever life the Lord intends to bring into the world, will come into being until the day of Resurrection.' (Imam Malik, *Muwatta*, Muhammad Ashraf, Lahore, 1980, pp.268-9)

These are then the injunctions of the Quran, this the *sunna* of the Prophet in regard to *Jihad*. Is it any wonder that the secondary law books state the law as unequivocally?

The *Fatawa-i-Alamgiri*—the great compendium of extracts from the works of the Hanafi school of law compiled on the orders of Aurangzeb—lays down that *Jihad* is the noblest of professions. The compendium most frequently relied upon in India is of course the *Hedaya* of Sheikh Burhann'd-din Ali (d. AD 1198). Translated by Charles Hamilton in 1791 by orders of Warren Hastings, it has since been the foundation of what we know as Muslim law in India today.

It restates Allah's injunction to 'slay the infidels', and recalls the Prophet's words, 'War is permanently established till the Day of Judgement.'

It sets aside all pretence about *Jihad* being defensive. 'The destruction of the sword is incurred by the infidels,' it lays down, 'although they be not the first aggressors, as appears from the various passages in the sacred writings, which are generally received to this effect.'

One should normally invite the infidels to embrace Islam before attacking them, 'but yet if he [the Musalman] do attack them before thus inviting them, and slay them, and take their property, neither fine, expiation nor atonement are due, because that which protects [namely, Islam], does not exist in them, nor are they under protection by place [namely, the Musalman territory], and the mere prohibition of the act is not sufficient to sanction the exaction either of fine, or of atonement for property; in the same manner as the slaying of the women or infant children of infidels is forbidden; but if, notwithstanding, a person were to slay such, he is not liable to a fine.'

If they do not surrender to Islam, if they do not pay the capitation tax, invoking Allah,

the Musalmans must then, with God's assistance, attack the infidels with all manner of war-like engines (as the Prophet did by the people of Tayeef), and must also set fire to their habitations (in the same manner as the Prophet fired Baweera), and must inundate them with water, and tear up their plantations, and tread down their grain; because by these means they will become weakened, and their resolution will fail, and their force be broken; these means are therefore all sanctioned by the Law

Women, children and the disabled should not be slain, it says, 'But

yet if any of these persons be killed in war, or if a woman be a queen or a chief, in this case it is allowable to slay them, they being qualified [i.e. being in a position] to molest the servants of God. So also, if such persons as the above should attempt to fight, they may be slain, for the purpose of removing evil, and because fighting renders slaying allowable.'

Peace may be made when advisable, it says, or broken when necessary, giving the infidels due notice, unless they act perfidiously, in which case they may be attacked without warning.

All movable property must be confiscated. As for the rest, it says, affairs should be so arranged that 'the inhabitants are merely the cultivators of the soil on behalf of the Musalmans, as performing all the labour, in the various modes of tillage, on their account, without their [i.e. the Musalmans] being subjected to any of the trouble or expense attending it.'

As for the prisoners, it lays down, 'The Imam, with respect to captives, has it in his choice to slay them, because the Prophet put captives to death—and also because slaying them terminates wickedness—or, if he choose, he may make them slaves, because by enslaving them the evil of them is remedied, at the same time that Musalmans reap an advantage; or, if he please, he may release them so as to make them free men or Zimmies....' The idolators of Arabia or apostates are not to be released. In any case, they should not be allowed to return to their country, 'as this would be strengthening the infidels against the Musalman'.

He who converts to Islam should not be killed. He should not however be sent to his country. He can retain his liberty, the property that is 'in his hands' and his infant children. But his lands, his wife, her foetus, his adult children, etc. all become public property, says the law book.

This then is the law—as enjoined by the Quran, as proclaimed by the Prophet's *sunna*, as set out in the law books.

Must we revert to it? We must, if Muslim law is the seamless garment that we are being told it is.

Inequitable

THUS, IF WE acknowledge the results of modern scholarship, we are left with little on which to base Muslim personal law. If we continue to

maintain that, evidence or no evidence, the traditions, etc. are authentic, we notice that much of what they and the other texts say is obviously dated. If we disregard this evidence also and insist that every word in the Quran and the traditions is eternally true and therefore eternally binding, we have to decide whether we should reintroduce the provisions regarding criminal law, the law of evidence, institutions like slavery, and the whole stance towards non-Muslims, culminating as it does in the mandatory, ineluctable duty of *Jihad*.

Each of these positions, we have seen, leads to untenable results. None of them is able to provide the blanket cover that is today being claimed on behalf of Muslim law. We thus have no alternative but to examine each provision of personal law by itself. If it is excellent, we must urge that it be applied to all. If it is medieval, there is no ground on which we can justify the subjection of any one to it.

Now, the provisions of personal law that are most in the public mind today—those on polygamy, divorce, and alimony—discriminate against women clearly and heavily.

Polygamy is sanctioned by the Quran and sanctified by the example of the Prophet—who had nine wives, on one count eleven—and that of his companions. Two verses from the Quran are pertinent:

If you fear that you will not act justly towards the orphans, marry such women as seem good to you, two, or three, or four; but if you fear that you will not be equitable, then only one, or what your right hand owns; so it is likelier you will not be partial.

(4.3)

and

You will not be able to be equitable between your wives, be you ever so eager; yet do not be altogether partial, so that you leave her as it were suspended.

(4.128)

Notice, first, that the Quran allows four wives; second, that it allows four wives *at a time*—one can keep acquiring more, provided one keeps divorcing the requisite number from the existing stock. Third, in addition to the four wives, the Quran allows concubines, the ones that 'your right hand owns'. There is no restriction as to the number of these that one may keep.

In spite of these facts, it is clear that the Quran marks an advance over the situation as it prevailed then in Arabia. From an unlimited number, it limits the number of wives to four. Apologists and reformers have gone further and have maintained that in fact the Quran prescribes monogamy. According to them, in verse 4.3 it makes the permission to marry up to four wives *conditional*—the condition being that the husband should have no fear that he will not be equitable to them, and that in verse 4.128 it has said that, howsoever eager he may be to do so, this is a condition that he is not likely to be able to fulfil.

It is a well-intentioned argument, but a disingenuous one.

Verse 4.3 does not lay down a condition. It sets out an enabling clause. A word about the context of the verse will clarify the matter.

The preceding verses show, and the tradition states (*Bukhari*, 62. 35) that the anxiety here is about an orphan girl who is in a man's custody and whom he decides to marry for her wealth. Allah says that rather than doing so you should marry two, three or four women, that if you fear you will not be equitable towards them marry one and use the concubines. This way you will be kept from being unjust to the orphan. The number of wives and concubines that you may need to ward off this injustice is a secondary concern of the verse.

Moreover, the satisfaction about the possibility of being equitable that is required is the *subjective* satisfaction of the husband—'but if you fear....', says the Quran.

The second verse in question (4.128) puts no embargo on having four wives. In fact, it *assumes* that there are more wives than one and says that while, try howsoever hard you will, you will not be able to be completely equitable to each of the wives, take care not to be so partial as to neglect one completely.

Third, the injunction about being equitable, it is said, does not mean that one has to have identical *feelings* towards each of the wives. That is recognised as being impossible. What is required here is that one must be equitable towards the wives in the matter of providing lodgings, maintenance, in visiting them, etc. This construction draws force from the traditions. The Prophet was exempted by Allah from many of the restrictions and requirements that were decreed for the followers, and so the requirement about being equitable did not strictly apply to him. But if anyone *could* have been equitable, in view of his excellence, it was the Prophet. Now, in the well-known tradition, he makes the

important distinction that settles the matter: 'O God,' he says, 'I make an equal partition amongst my wives *as to what is in my power*; do not, therefore, bring me to account for *that which is not in my power, namely, the affections*.' Several traditions indicate how among his nine wives Aisha was the closest to him and how this occasioned some misgivings among the other wives. Surely, if even the Prophet could not be expected to be equitable in regard to the affections, what is required of mere mortals is merely that they be equitable in regard to maintenance, lodging, etc. And this requirement is no effective bar to polygamy.

Furthermore, in the traditions the Prophet is extolled for the number of wives he had, and others are exhorted, 'Marry, for the best person of his [i.e. Muslim] nation [i.e. Muhammad] of all other Muslims, has the largest number of wives.' (*Bukhari*, 62.5-7; also A.J. Wensinck, *A Handbook of Early Muhammadan Tradition*, Leiden, E.J. Brill, 1927, p.143). Even if we do not go by the Prophet's example in this matter because of the special exemptions Allah ordained for him, and because of the exceptional excellence which enabled him to be more equitable among wives than others can be, there is the example of his companions. Many of them had many wives, and they certainly cannot be accused of either going against or misunderstanding the Quran or the Prophet on the matter.

One must therefore conclude regretfully that the modern apologists and reformists are wrong, and that in holding four wives at a time to be legal the law books like the *Hedaya* are correct.

The question of divorce is much simpler. The husband has absolute, unfettered and exclusive power to cast his wife aside. There are many ways in which a marriage can be ended—by mutual cursing, by mutual consent. These are all set out in the law books. What concerns us here is that the husband has the right to throw out his wife by pronouncing '*talaq*' thrice, that he need assign no reason whatsoever for doing so, that, while conciliation, etc. may be attempted, if he sticks to his resolve, the wife has no recourse at all, there is no authority or court to which she can appeal. The husband can decree the divorce even in the wife's absence, indeed he may do so even through a representative.

The wife, of course, has no corresponding power. She may, under certain circumstances, request a divorce, but whether she will secure it or not depends on the sweet will of the husband. The only

circumstance in which she can end the marriage is when the husband has delegated to her the power to divorce herself. But even in this case her ability is hemmed in by the requirement that she must prove that the power was in fact delegated to her.

Second, the moment she is divorced, the wife loses all rights. All she gets is her dower. The husband is to pay her a maintenance allowance for only three menstrual periods, or three months. If she is pregnant then the period is upto the delivery of the child or three months, whichever is earlier.

The question here is not whether the wife's blood relatives—her sons, brothers, father, etc.—can maintain her or not, a point that is being made currently in relation to Shah Bano. The point is that there is no obligation whatsoever *on the husband* to furnish her with anything after that short *iddat* of three months. This is important in particular because this is so in spite of the absolute, exclusive, unfettered power that the husband has to discard his wife, and because the obligation is to cease *irrespective of whether the divorced woman can or cannot find a way to maintain herself*.

In the traditions the Prophet warns that nothing is more hateful to God than divorce, that no one should make a sport of it, etc. But these are recommendations. They do not dilute the husband's power in the matter one whit.

The View of Women

NOW, THESE provisions are not fortuitous. They cannot be got around by tricks, by quoting three or four words from the Quran or citing one or two sayings of the Prophet. They are rooted in the view that the Quran and the *hadis* have of women.

'Your wives are your field,' says the Quran, 'Go in therefore to your field when or how you will, but do first some act for your soul's good....' (2.223).

In explaining the verse the traditions narrate: 'Jews used to say: "If one has sexual intercourse with his wife from the back, then she will deliver a squint-eyed child." So this verse was revealed....' (*Bukhari*, 60.51) The act for the good of one's soul that is to be done is not specified in the Quran. One possibility is suggested by the traditions. The Prophet says, 'If anyone of you on having sexual relations with his wife said [and he must say it before starting], "*Bismillah, Allahumma*

Jannibni-Sh-Shaitan wa Jannib-ish-Shaitan ma razagtana [i.e. 'In the name of Allah! Protect me from Satan and protect what you bestow up on us (i.e. an offspring) from Satan'], and if it is destined that they should have a child then Satan will never be able to harm that offspring.' (*Bukhari*, 4.143 and 62.94) The probability that this is the sort of counsel which is intended by the verse about the act one must do before 'going into one's field' is reinforced by another tradition. The prophet Solomon, son of the prophet David, we are told, said: 'Tonight I will go round [i.e. have sexual relations with] one hundred women [my wives] everyone of whom will deliver a male child who will fight in Allah's Cause.' On that an angel said to him: 'Say: "If Allah will."' But Solomon did not say it and forgot to say it. Then he had sexual relations with them but none of them delivered any child except one who delivered a half person. The Prophet said, 'If Solomon had said: "If Allah will", Allah would have fulfilled his [above] desire and that saying would have made him more hopeful.' (*Bukhari*, 62.169)

In the *Sura*, 'Women', the Quran says, 'Do not covet that whereby God in bounty, has preferred one of you above another,' and declares,

Men are the managers of the affairs of women for that God has preferred in bounty one of them over another, and for that they [i.e. the men] have expended of their property [in the dower, in maintenance, etc.]

Righteous women are therefore obedient, guarding the secret of God's guarding. And those you fear may be rebellious admonish; banish them to their couches, and beat them. If they then obey you look not for any way against them; God is All-high, All-great. (4.34)

The woman is therefore clearly the inferior one. Believers are advised to be kind to their wives, not to keep or take back the dower at the time of casting them away, etc. but the general position is unambiguous. The woman is to obey. The man, if necessary, may admonish her, banish her, beat her.

Specific provisions follow from this general view. A woman, if divorced, must wait for three menstrual periods. During this probationary interval (decreed so as to avoid subsequent disputes about paternity) the husband may resort to her if he changes his mind: 'Women

have such honourable rights as obligations,' the Quran adds, 'but their men have a degree above them.' (2.228) Similarly, in the matter of inheritance, daughters are to get one half of the share of sons. (4.12, 175).

Several traditions also ask the husbands to be considerate to their wives. But the general view of women is, if anything, worse.

Women are looked upon as things to be enjoyed: 'The whole world is to be enjoyed,' the Prophet says, 'but the best thing in the world is a good woman.' (*Mishkat*, 1, p. 658) They are also temptresses that one has to beware: 'Whenever a man is alone with a woman,' the Prophet says, 'the devil makes a third.' 'Do not visit women whose husbands are away from home,' he says, 'for the devil circulates in you like your blood.' (*Mishkat*, 1, p. 663) And wives are seen as objects into whom one should expend one's passions when thus tempted by other women: 'A woman advances in the form of a devil and retires in the form of a devil,' the Prophet says. 'When one of you is charmed by a woman and she affects your heart he should go to his wife and have intercourse with her, for that will repel what he is feeling.' The point is reiterated in another tradition in which the Prophet, after a personal incident, says, 'If any man sees a woman who charms him, he should go to his wife, for she has the same kind of thing as the other woman.' (*Mishkat*, 1, p.662)

Men are exhorted to look after their wives. But these are also looked upon in the conventional medieval way, as pots to vent one's passions in: 'Young men', counsels the Prophet,

those of you who can support a wife should marry, for it keeps you from looking at strange women and preserves you from immorality; but those who cannot should devote themselves to fasting, for it is a means of suppressing sexual desire. (*Mishkat*, 1, p. 658)

And as vehicles of procreation:

Marry women who are loving and very prolific, for I shall outnumber the peoples by you. (*Mishkat*, 1, p. 659)

The Quranic concept of women being a man's tilth, his field that he may go into when or how he will, finds many echoes in the traditions, sometimes literally. The question is put, 'O Abu Said, I have some

slave-girls who are better than my wives, but I do not desire that they should all become pregnant. Shall I do *azl* (coitus interruptus) with them?' And the companion answers, 'They are your fields of cultivation, if you wish to irrigate them do so, or if you desire otherwise, keep them dry.' (*Muwatta, op. cit.*, 1221)

If the wife resists her husband's overtures, the Prophet says, she commits a sin, and is cursed. 'If a man invites his wife to sleep with him and she refuses to come to him,' says the Prophet, 'then the angels send their curses on her till morning.' (*Bukhari*, 62.121-2) and 'He who is in heaven is displeased with her till her husband is pleased with her.' (*Mishkat*, 1, p. 689) The duty of the wife thus is clear: 'When a man calls his wife to satisfy his desire she must go to him even if she is occupied at the oven.' (*Mishkat*, 1, p. 691) When a young man explains that his wife 'keeps on fasting and I am a young man who cannot contain himself,' the Prophet specifies, 'A woman may fast only with her husband's permission.' (*Ibid*, pp. 693-4)

The good wife is one 'who obeys him if he commands her, pleases him if he looks at her, is true to him if he abjures her to do something, and is sincere to him regarding her person and his property if he is absent.' (*Mishkat*, 1, pp. 660, 694) Husbands are counselled to treat their wives well, in part because doing so is virtuous and in part for a utilitarian reason: 'The woman is like a rib; if you try to straighten her, she will break. So if you want to get benefit from her, do so while she still has some crookedness.' (*Bukhari*, 62.113, 114) Therefore, while, as the Prophet says, 'A man will not be asked about why he beat his wife,' (*Mishkat*, 1, p. 693), if she has to be beaten, she should be beaten lightly, that is, not as one would beat a slave-girl: 'Give her a command,' the Prophet counsels a man who comes to ask his advice on what he should do about the foul tongue of his wife, 'and if there is any good in her she will accept it; but do not beat your wife as you would beat your young slave-girl.' (*Mishkat*, 1, p. 692; see also *Bukhari*, 62.132)

The proper relation between husband and wife is thus put by the Prophet: 'Worship your Lord and honour your brother. If I were to order anyone to prostrate himself before another, I would order a woman to prostrate herself before her husband; and if he were to order her to convey stones from a yellow mountain to a black one, or from a black mountain to a white one, it would be incumbent on her to do so.' This is so, he says, 'because of the special right over them [i.e., over the wives] given to the husbands by God.' (*Mishkat*, 1, pp. 691, 693, 694)

'After me,' says the Prophet, 'I have not left any affliction more harmful to men than women.' (*Bukhari*, 62.33; *Muslim*, 6603-5 similar) After he has viewed heaven and hell, the Prophet reports that women are the ones who constitute the majority in hell (*Bukhari*, 2.28, 62.124-6, 76.456, 553; *Muslim*, 6596-6601). The reason seems to be not that they lack piety but that they are ungrateful to their husbands. The tradition has the Prophet saying,

'Then I saw the [Hell] Fire, and I have never before seen such a horrible sight as that, and I saw that the majority of its dwellers were women.' The people asked: 'O Allah's Apostle! What is the reason for that?' He replies, 'Because of their ungratefulness.' It was said, 'Do they disbelieve in Allah [are they ungrateful to Allah]?' He replied, 'They are not thankful to their husbands and are ungrateful for the favours done to them. Even if you do good to one of them all your life, when she sees some harshness from you [*sic*]—at another place the words are 'and then she sees something in you [not to her liking,]—she will say, "I never seen any good from you." '(*Bukhari*, 62.125; 2.28)

It is no wonder therefore that women are to count for half of men in inheritance, that the evidence of two women is to equal the evidence of one man—'This,' says the Prophet in relation to the latter, 'is because of the deficiency of a woman's mind.' (*Bukhari*, 48.826) And it is even less of a wonder that the Prophet should affirm, 'Never shall succeed such a nation as makes a woman their ruler.' (*Bukhari*, 88.219)

The laws that are so heavily weighted in favour of men flow naturally and inexorably from this basic view of women. And that is why there is no easy way round them.

Reforms in Muslim Countries

THE MANIFEST inequity of these laws and their obsolescence have led one Muslim country after another to reform them wholesale. Many have tried to dress the reforms up by asserting that they are derived from or based on the Shariat itself. Some have invoked 'the principle of necessity' and instituted reforms on this basis. Some have based these on *Takhsis-al-qada*, the right of a ruler to specify what will and what will not be within the jurisdiction of the courts.

Another even more openly eclectic method has been *talfiq*, i.e. 'patching up' by combining the opinions of different schools and jurists.

Others have been even more inventive and have enlarged the latitude of choosing one school of Islamic law or another out of recognition. They have decided to choose not just this school or that, but to choose school 'X' on point 'A', school 'Y' on point 'B' and so on. Not just that. Differences of opinion within a school have been pressed into service. The countries have decided that even after choosing one school on a particular point, they are not bound by the settled or dominant view of that school on that point, but will choose from among all of the views that have been expressed on that point by any of the adherents of that school. This realistic expedient too has been elevated to the level of principle and given a fine sounding name—*takhayyur*.

Now, one can raise anything to the point of principle and sanctify it by giving it an Arabic or a Persian name. And, I suppose, if a fig-leaf helps, it is good. But these are transparent subterfuges. The main points to remember are: because of the press of reality, almost all Muslim countries have reformed personal law, as also every other aspect of Islamic law; and that in doing so they have derived the new formulations from widely disparate sources — the Napoleonic code, the codes of Britain, Italy, even Japan.

The changes are set out exhaustively in the standard texts (for instance, Norman Anderson, *Law Reform in the Muslim World*, University of London, The Athlone Press, London, 1976; Tanzil-Ur-Rahman, *A Code of Muslim Personal Law*, Vol. 1, Hamdard Centre, Karachi, 1978). Even a few examples will show both that the new laws have gone beyond the Quran, the *sunna*, etc. and also that the laws applicable in these countries now, even on matters such as polygamy, divorce etc. are far more equitable than the ones in India.

The Ottoman Commercial Code of 1850 which was adopted throughout the Ottoman Empire and Egypt and features of which were incorporated in Saudi Arabia too, was, as Anderson puts it, 'squarely based on French law and owes virtually nothing to the Shariat.' Outside the Ottoman Empire, French law has been the basis of commercial codes in former French colonies, and British law in former British colonies.

The same thing is true of criminal law—both on substance and procedure. Starting with the Ottoman Penal Code of 1858, the new

codes in each instance have been based on French and Italian laws on the subject and on the (British) Indian Penal Code of 1860.

Nor is the position any different in relation to the civil codes. The Egyptian Code of 1948 which in turn formed the basis of the codes of Syria, Libya, Iraq, etc. was based on Napoleon's code. It incorporated features from German, Italian and Japanese laws also. It retained just a few provisions of the Shariat. The Persian Civil Code of 1939 too incorporated much from the French.

Even on the specific matters that are under discussion today in India—marriage, divorce, etc.—these countries have gone way ahead of our laws.

On marriage, two illustrations will suffice. As is well-known, child marriages were customary in Islam, as in other traditions such as Hinduism. The Prophet himself married the indomitable Aisha when she was six, the marriage being consummated when she was nine. The Prophet was in his fifties; they remained happily married till the Prophet's death, nine years later. The traditions also have him saying that it is written in the Torah, 'If anyone does not give his daughter in marriage when she reaches twelve and she commits sin, the guilt of that rests on him.' (*Mishkat*, 1, p.667) But today in all parts of the Islamic world child marriages are outlawed.

Polygamy too has been restricted in country after country. It has been completely prohibited in Tunisia by Article 18 of the Law of Personal Status, 1956. In 1964 Tunisia decreed that not only would a second marriage make the husband and the new wife liable to criminal punishment, the marriage itself would be invalid. Similarly, Article 223 of the Ismaili Khojas of East Africa says, 'Polygamy is strictly prohibited.' Under the Constitution, a marriage can be solemnised only, if neither has a living spouse.

Other countries have taken steps in two directions. First, they have laid down conditions that must be fulfilled before the husband can take on another wife, and, second, they have decreed that institutions or persons other than the husband—the courts, the Qazis, etc.—must satisfy themselves that the conditions laid down are indeed met in the particular case.

In Pakistan, the Muslim Family Law Ordinance of 1961 provides that no husband, during the subsistence of an existing marriage, can contract another one without the previous permission in writing of a government-appointed 'Arbitration Council'. Under it, the husband is

obliged to state in writing his reasons for wanting to marry again, and also to specify whether the permission of the existing wife has been obtained. The Council then asks him and his existing wife to nominate representatives. Next, it ascertains whether another marriage is 'necessary and just'. Even if the Council sanctions another marriage, the wife can apply to the Collector for a revision and, says the law, 'His decision shall be final and shall not be called in question in any court.'

Under the Moroccan Code of 1958, the Qazi is first to investigate whether there is any fear that, as a result of the new marriage, the existing wife will be treated unequally. The wife can specifically ask him to investigate any particular injury that she is liable to suffer as a consequence.

Under the 1959 law of Iraq, permission for a second marriage is to be refused unless the Court is satisfied that the husband has the financial capacity to maintain more than one wife and that, in addition, the second marriage will yield some 'lawful benefit'. Moreover, if there is the apprehension that the wives will not be treated equally, the permission is to be refused, in this case by the Qazi.

Under the 1968 law in Singapore, another marriage can be contracted only after the permission of the Chief Qazi, and this permission is seldom given.

Under the Family Protection Law that the Shah enacted in Iran in 1975, a husband had no right to take on a second wife unless the existing wife either consented to the marriage or a series of very specific conditions were fulfilled, i.e. unless it was established that the wife was unable or unwilling to cohabit, or that she had become insane, or that she was suffering from an incurable disease, was addicted to drugs, drinking, gambling, etc. or that she had deserted him, or that she was sterile, or had been convicted of a crime entailing punishment for five years or more. Moreover, if such permission was granted on these grounds, the existing wife could at once petition the Court to have her marriage dissolved.

Even in little South Yemen, under a 1974 law, a second marriage is not permitted without the written permission of the appropriate district court, and the court is not allowed to give its permission unless there is a medical certificate showing that the wife is barren (and also unless it is shown that the husband did not know of this at the time of marriage), or a medical certificate showing that the wife suffers from an infectious, chronic and incurable disease.

Under the Turkish code, no person can marry again unless he proves that the previous marriage has been dissolved by the death of the other party, or by divorce or a decree of nullity.

There have been corresponding advances in the law of divorce. First, steps have been taken towards putting the wife at par with the husband in initiating and ensuring divorce. Second, the courts and others have been brought into the process. Third, in some countries, although the number is fewer, the husband's power to act arbitrarily has been hemmed in.

The Tunisian law puts the wife completely on a par with the husband in this matter. Under Article 31(3), a wife may insist on a judicial divorce for any reason or none, provided she is prepared to pay such compensation to the husband as the court specifies.

Under the Pakistan Ordinance, a wife can sue for divorce where her husband has taken another wife in contravention of the provisions of the Ordinance. The case law has gone farther and established that on the petition of the wife, the courts can decide on a divorce where *they* find—i.e. *the judges and not the husband*—that the temperaments of the two are irreconcilable or that the marriage has broken down.

In the Middle East, the Ottoman Law of Family Rights began this process as far back as 1917. Under it, if the original marriage contract provided that the husband shall not take another wife and he did so, the original marriage stood dissolved. Second, the wife could ask for a divorce if the husband deserted her or was afflicted by a dangerous disease.

Subsequent reforms in Egypt, Sudan, Jordan, Syria, Tunisia, Morocco, Iraq, Iran took the matter farther. They enlarged the list of 'defects' on grounds of which the wife could initiate a divorce—these ranged from addiction of various kinds to commission of an offence repugnant to family honour or the prestige of the wife—and they added new grounds, for instance, the failure to maintain the wife in the condition that was appropriate or to which she was accustomed. As noted earlier, the Indian Dissolution of Muslim Marriages Act of 1939 also marked a major step forward in this respect.

In country after country the law now provides that no divorce is to be effective or to be recognised until the courts have passed a decree to that effect. Under the Tunisian law of 1956, no divorce that is pronounced outside a court of law has any legal validity whatsoever. In Pakistan, the husband must give notice to the wife as well as the local

Chairman. The latter is to appoint an Arbitration Council, and this Council is to first attempt a reconciliation.

A few countries—Iran under the Shah was a leader in this—have gone farther and restricted the power of the husband to ask for divorce. Under the Iranian law, for instance, a husband could divorce a wife only upon obtaining 'a certificate of impossibility of reconciliation' from a court, and this certificate could be given only if he could prove his case on specified grounds.

Even on alimony, there has been a little progress. The Constitution of the Ismaili Khojas of East Africa provides in Article 273 that 'if, upon dissolution of a marriage, the Council is of the opinion...that the husband was responsible for the breaking up of the marriage, it may award to the wife such monetary compensation as it may deem just and reasonable in addition to the Mehr.' The Tunisian law provides that where the husband (or the wife) is the one who insists on a divorce, the Court shall decree the compensation that he (or she) shall pay. The Moroccan law requires the husband to pay the wife a parting, conciliatory gift 'in proportion to his means and her circumstances'.

Conclusion

THERE IS therefore no shortage of precedents. Nor is it difficult to find 'grounds' for such changes in this or that passage from the Quran or in the traditions of the Prophet. 'I desire only to set things right,' says the Quran, 'so far as I am able,' (11.90) and one can argue that what is to be respected and practised in regard to proclamations such as this is the commitment and aspiration to continually 'set things right'. There is the tradition referred to earlier about the date-trees in which the Prophet affirms that while on religious matters, he is the better judge, on temporal matters his followers are. There is the tradition too, in which he says, 'Islam was born alone, and will become alone again, as at its beginning. Happy the solitary men. Those are they who will come to reform that which will be debased after me.' One can argue, as Iqbāl did in his famous lectures on *The Reconstruction of Religious Thought in Islam*, that 'the doors of *ijtihad*' were 'closed' for purely historical reasons and that, a thousand years having gone by, it is time for them to be reopened.

More than any of these, one can draw inspiration from *the tendency* inherent in the Quran and the Prophet's injunctions. They did not

abolish slavery, true; but, it can be argued that they tried to humanise it. They did not abolish polygamy, true; but they prescribed a maximum where there had been none. Their view of women bears the stamp of the time, true; but they took a step forward by enjoining that the women should be treated well. They did not place women on a par with men in regard to property, true; but they incorporated in their institutes the right of a woman to have property of her own. Instead of getting stuck at the letter of the Quran and the *hadis*, therefore, we can focus on the tendency inherent in them, and thus press forward with reforms.

As has been suggested above, one *can*, if one tries hard enough, find in the rich and varied stock of a vigorous religion such justifications for adjusting old formulations to new realities. And if such citations help, they should be put together.

But we should be forewarned: in any such contest of quotation-mongering, the fundamentalists are bound to win. As suggested above, the laws, in fact, derive from the world-view of seventh century Arabia, and a few stray quotations cannot dislodge their claim to be what was enjoined.

The straightforward way is the only one which will be effective. This way is as follows:

- Each provision of each of our codes—and not just the Muslim one—must be re-examined in the light of modern secular principles.
- A new draft code based on what is best in them as well as in codes in force elsewhere in the world should be drawn up.
- The task of preparing this code must be entrusted, not to the clerics and priests and theologians of any religion, but to modern, secular jurists.
- Once prepared, the code should first be enacted as *an option* so that all Indians can choose whether they want to be governed by this code or by the one specific to their religion,
- As a final step, of course, this modern, secular, common code should replace the existing parochial ones.

There are two preconditions for reform along these lines. The first is a great campaign of education. On all such matters, almost invariably, we leave the debate to the least informed and the most reactionary elements in our society. We must ourselves get back to first principles. We must ourselves read the primary texts. We must ourselves prepare catalogues of the reforms that have been enacted in other

countries and circulate them throughout the length and breadth of our country. We must ourselves affirm that this is not a 'Hindu v. Muslim' question, but a question of human rights, in particular, of ensuring justice to some of the weakest in our country—namely, women. And throughout this campaign, the opinions that must be sought are not so much of the Hindu priests or the Muslim *ulema* but of the ones who are most handicapped by the laws.

Second, each section of our people must shed two notions. The first is that its security lies in fortifying its separateness. Our security and prosperity lies in our working together to strengthen the mores and institutions of a modern, secular State. The second notion is the one that sees the essence of religion in such externals as rituals on the one hand, and in whether or not alimony is to be paid on the other. Discarding such externals will get us all the more swiftly and surely to the essence of our religions.

And as our priests and politicians whip up our fears and passions, all of us must remember that what is cutting the ground from under our old laws or institutions, what is 'endangering' them is not the 'other' religion but that great solvent—time—and its accompaniment—change.

October, 1985

CHAPTER III

The Muslim Women's Bill

The General Secretary of the Indian Union Muslim League, G.M. Banatwala, introduced his Bill to undo the Supreme Court's judgment on the Shah Bano case on 15 March, 1985. It was due to come up for discussion in the Parliament. In August, Arif Mohammad Khan, then Minister of State in the Ministry of Home Affairs, was at a reception for the Assam student leaders (the accord had just been signed). He met the Prime Minister, Rajiv Gandhi and mentioned that he would like to speak on Banatwala's Bill. 'No, you might as well stay out of it,' Rajiv said. 'After all, you will just be saying what the others are saying.'

'That is just the point,' Arif told him, 'I don't want to say what the others are saying. I am convinced that asking a husband to help look after an indigent woman whom he has divorced is in accord with the spirit of the Shariat.'

The Prime Minister was suddenly interested. But after a few general remarks, he walked off to talk to the other guests.

He returned to Arif. He now approved the idea of Arif speaking on the Bill. He encouraged him to consult others also, scholars as well as other leaders of Muslim opinion.

Arif met Mr Justice V. Khalid, who had earlier decided an important

case on a related question. Referring to the decision of the Kerala High Court, that a divorce given 'under compulsion or in jest or in anger' would be 'perfectly valid', the judge had said in a subsequent case, 'My judicial conscience is disturbed at this monstrosity. The question is whether the conscience of the leaders of public opinion is also disturbed.' The judge told Arif that he was absolutely right, but he counselled the Minister against opposing Banatwala's Bill. Rightly or wrongly, he said, the whole community had come to feel that the Supreme Court had interfered in its personal law.

Arif met Tahir Mahmood, a Muslim professor of law, who had authored a standard textbook on Muslim personal law. Arif had learnt that an entire chapter containing the plea for a common civil code had been removed from the new edition. The professor too asked Arif not to oppose the Bill. The reason the professor gave had nothing to do with this Bill but with what he thought of the conduct of the Supreme Court on some other case involving Hindu law.

'But I ask you a simple question,' Arif said. 'If a well-to-do husband throws out his wife, and the wife has no way at all to keep body and soul together other than to go about begging or selling her body, if her relatives cannot maintain her, if the Muslim community, being poor, cannot provide for her, and if we then ask the husband to give her at least some maintenance, will we be contravening the Shariat? Will we be going against the spirit of Islam or acting in accordance with it?'

The professor agreed that asking the husband to do so would be in accordance with the spirit of Islam, and that there would be no contravention of the Shariat. Conversations of this kind confirmed Arif in his resolve to speak up on the issue.

It was decided that Arif would speak on behalf of the Government on Banatwala's Bill. This was quite in order. Every private member's Bill is 'addressed to' a particular ministry. The ministry then responds on behalf of the Government. Banatwala's Bill had been addressed to the Ministry of Home Affairs. Arif was then the Minister of State in this Ministry.

The Home and Law ministries had already prepared notes on the subject. Both had pointed out that personal law did not come into the question at all. Section 125 of the Cr. P.C., they said, was just meant to control vagrancy. The State had the right as well as the duty under the Constitution to control vagrancy. The religious argument, which was

the premise of Banatwala's Bill, should therefore be rejected at the threshold.

In his speech on 23 August, however, Arif took a different tack. He established the liberal position on the basis of Quranic texts, the *sunna* of the Prophet, that is, in terms of the Shariat itself.

He was loudly cheered by Congress MPs as well as by the Opposition. Najma Heptullah, then Deputy Chairman of the Rajya Sabha, was among those who wrote to him. '*Allah kare zare zuban aur ziyada*' (may God add lustre to your golden words), she wrote. The official of the Home Ministry who had prepared the brief complimented him too. 'Our line would not have worked,' he told Arif. 'Yours was the effective way.'

The session ended. The Council of Ministers was meeting. Rajiv Gandhi expressed satisfaction at the way the session had gone. He pointed to tasks ahead.

'The hero of the session has been Arif,' said Mrs Ram Dulari Sinha, who too was then Minister of State in the Ministry of Home Affairs.

The Prime Minister agreed and told them that he had already sent Arif a letter congratulating him on his speech. He had, indeed—on 25 August. He had not just congratulated Arif on his personal performance, he had said how happy he was to note the widespread appreciation that the speech had evoked in the country.

At a meeting of the Cabinet Committee on Political Affairs a few weeks later, the Prime Minister again praised the stand Arif had taken. Arif was an asset to the party, he said. One could find many liberals in the community, he said, but seldom did one come across a man of such courage. This warm praise was reported to Arif by a member of the committee.

A few days later, talking to three journalists, V.P. Singh, the Finance Minister, used identical words to commend Arif. One of the journalists told Arif what Singh had said.

Things began to sour, however, as the campaign for the 1985 Assam elections got under way. 'Arif has alienated the Muslims,' it was said. 'We must do something to win them back.'

Z.R. Ansari, another Minister of State, now spoke up in Parliament, denouncing not just the judgment of the Supreme Court but the Court itself. He characterised the judges as *teli-tambolis* (common oil-pressers) who had set themselves up as scholars and interpreters of law. At

the Supreme Court, Justice V.D. Tulzapurkar raised the matter more than once in the morning get-together and urged the Chief Justice to write to the Prime Minister protesting against the tirade. The Chief Justice eventually did so. The Prime Minister wrote back saying that he had counselled Ansari.

Arif felt let down. After all, he had spoken on behalf of the Government, after talking to the Prime Minister, after being briefed by officials of the Law Ministry as well as of his own Home Ministry. He had incurred the opprobrium of many Muslims. Urdu papers and leaders of the Muslim League had been denigrating him, saying that he was opposing Banatwala's Bill 'to strengthen his hold on the ministerial chair'.

His misgivings were soon allayed. To his surprise, he was told that the Prime Minister, who was visiting Oman, had personally substituted Arif's name for that of another Minister to accompany him on the visit. Arif was given to understand that this had been done to counter the impression that the Prime Minister had decided to dissociate himself from Arif's stand on the Shah Bano case.

The trip confirmed Arif's hopes. In fact, it was suggested to him that the Ansari business was meant strictly for consumption in Assam. Arif chose to believe this rather than what Rajiv Gandhi had himself said at Ansari's subsequent conference—that the Government was considering changes in the law that would take Muslims out of the purview of Section 125.

Early in February 1986, Arif was told that the Government was in fact thinking of introducing a Bill to this effect. He met among others A.K. Sen, the Union Law Minister. Sen told him that the Government had 'come to an understanding with the religious leaders'. These leaders, Arif was astonished to learn, had now been accepted by the Government as spokesmen of the Muslim community. They included leaders of the Muslim League, the Muslim Majlis, the Muslim Personal Law Board, the Majlis Ijtihad ul Musalmeen—each of them a rank communal organisation.

He was told that the Bill would have the parents and other relatives of the divorced woman maintain her, and, if they could not, the Bill would have the wakf boards do so.

Arif pointed to the gross injustice of the Bill, how the law would now relegate Muslim women to a position abjectly inferior to that of other women in the country. He also pointed out that the clause about the

wakf boards was quixotic. He had personal knowledge of the financial position of the wakf boards from his work in Uttar Pradesh. On the eve of festivals they have to run around asking for handouts from the State Government even to pay a little advance to their employees, he told Sen. In any case, where does the Quran say, what part of the Shariat says, that blood relatives must maintain a divorced woman or that wakf boards should do so? In fact the assets and proceeds of a wakf can be used only for the purposes for which it has been created, he said.

Sen agreed on every point, but kept saying that the religious leaders thought this could be done.

Arif was now convinced that if the Government persisted in introducing the Bill, he would have to resign. Over the next two weeks he met few people, and he began to stay away from his office bit by bit.

A.K. Sen finally introduced the Bill on 25 February. The Bill hurt Arif but Sen's remarks while introducing it hurt even more. The Law Minister said that it had been the consistent policy of the Government that in matters pertaining to a community, priority should be given to the leaders of that community.

An MP interjected, had the Government not seen the statement that 125 eminent Muslims had signed? They included the seniormost diplomats, a sitting member of the Planning Commission, a vice-chancellor, senior officials of the Government itself, and they had pointed out that the Bill would set the community back.

They are just 'dancers and actors', shouted Ibrahim Suleiman Sait, the President of the Muslim League. No one in the Government contradicted him.

Arif was horrified. It was the 'sole spokesman' business *a la* Jinnah all over again. He wrote out a two-line letter of resignation and twice proceeded to meet the Prime Minister. Both times he returned to his seat.

The introduction of the Bill was over around 4.30 p.m. On his way out he told V. George, personal secretary to the Prime Minister, that he would be sending a letter for the PM and that George should hand it over as soon as he received it.

'But aren't you coming for the 6 o'clock meeting?' George asked him. (The Council of Ministers was to meet, and Arif was to have attended it.) 'No, I may not be able to attend it,' Arif told him, 'but please see to it that the PM gets the letter before the meeting starts.'

Arif went home, sent his letter, and left his house for another place. The letter was duly handed over to Rajiv Gandhi. There were phone calls to Arif's house but the callers were told that he wasn't home.

The next morning he was called to see Arun Singh, an aide close to the Prime Minister, and Minister of State for Defence. Singh had Arif's resignation letter with him when the two met in the outer lobby of the Parliament. They spent over an hour together. Arun was, as always, polite, soft-spoken and understanding. He told Arif that he—Arif, that is—had gone up in his esteem, that what he was doing was indeed the thing a man of principle would do. No man of honour could have done less. But, he said, it would have the unfortunate consequence that from now on no one would dare to even differ. Everyone would cite what happened to Arif. For this reason, Arun said, he should withdraw the resignation. Arif explained his difficulty in the matter. He had spoken at length on the question. He had incurred the opprobrium of many in his community for doing so. He felt that the Government was dealing with rank communalists and fundamentalists. This was against everything the Congress had stood for. The injustice that would be inflicted on Muslim women...we were going back to the pre-Partition days.

Arun Singh agreed with everything. He told Arif that he understood his difficulty in the matter. He might himself have resigned in such a situation, he said. He agreed on the fundamentalists too. Whatever reasons were given in favour of the Bill, he said, the fundamentalists were bound to claim it as their victory.

Arif's resignation would embarrass the Prime Minister personally, Arun explained. In any case, Arif had done what his conscience required him to do. And what if the Prime Minister now turned down his request to be relieved of office, Arun asked.

He would have to stay, Arif said. But he would be of no use to the Government or the party. He could just shuttle between his home and his office. He would never go to his constituency or elsewhere. You say the fundamentalists are the leaders, he said. But the people voted for the Prime Minister, they voted for you, for all of us, not for the fundamentalists.

Arif was next called to meet Arun Nehru, a cousin of Rajiv Gandhi, and at that time the Minister of State for Internal Security. They met thrice, each time in the same outer lobby in the full view of many MPs. The conversation followed the pattern of the earlier one. Nehru too

agreed with every point Arif put forward, and lamented that such a situation had arisen. But now they were under a 'compulsion'. The 'compulsion' was not spelled out. But Arif gathered that the agitation and the hysteria that had been whipped up had had their intended effect.

Like Arun Singh, Arun Nehru too appreciated Arif's difficulty. He too said that he also might have resigned in a similar situation. But what if, Arif having sent in his resignation, the PM did not accept it?

Finally, Arif met Rajiv Gandhi at 9.15 that evening. They were together for half an hour. The Prime Minister was courteous, even sympathetic. Arif went over the points one by one. Rajiv seemed to appreciate each of them. He too put the blame on the unfortunate situation that had arisen. He did not defend the Bill much.

His final question was to ask Arif what should be done so that people would not say that he, Rajiv Gandhi, had dumped him. Arif thanked him for the sentiment but explained that the Prime Minister was in the best position to judge what should be done in the circumstances.

I have not known Arif. Our paths have crossed only once before. He was once kind enough to read an article of mine in 1980 and file a privilege motion against me. This time around, he was kind enough to agree to come over to my house and discuss the events narrated above.

It is clear that he has taken a stand on a principle. He is concerned that the Government has lent respectability to rank communalists, that it has accepted the fatal assertions, first, that Muslims alone can speak for Muslims, and, second, that among Muslims the fundamentalists alone can speak for Muslims. This, he has told Rajiv Gandhi and his aides, and he affirms today to his colleagues in the Congress, takes us back to the pre-Partition days. Then too, he recalls, this is precisely what the Muslim League used to say, this is precisely what the Congress fought against.

He is convinced that the Bill is bad on merits, that it goes against the tenets of Islam, that it will compound the grave injustice from which Muslim women already suffer. He has done a great deal of work on the question. As we talked on the law in my study, two volumes of the nine of *Sahih al-Bukhari* (the most highly revered collection of the traditions of the Prophet) happened to be lying among the pile on the table.

'Here, look at this,' he said. 'This is Volume 7, isn't it? Look at pages 199 and 200.' He opened them and read the chapter heading. 'The gift

given by a husband to a divorced lady for whom Mahr has been fixed, by virtue of the statement of Allah.'

There is no blame on you if you divorce women while yet you have not touched them nor appointed unto them their dower (Mahr). But bestow upon them (a suitable gift)... Truly Allah is all-seeing of what you do. (Quran, 2.236-7)

'And Allah also said,' he continued reading from Bukhari,

And for divorced, maintenance (should be provided) on a reasonable (scale). This is a duty on the pious. Thus Allah makes clear his signs to you in order that you may understand. (Quran, 2.241-2)

Nine Muslim countries, he said, already have laws that require the husband to provide maintenance to the wife he divorces. A Pakistani Alim, he has been told, has written in a Lahore newspaper that the assertion of some Muslims in India, that in decreeing maintenance the Indian Supreme Court has thwarted the Shariat, is derogatory to Islam. To buttress his case, he quoted the paragons of fundamentalism itself—from Maulana Maudoodi to Mustafa As Sibae to Abu Zohra.

Many Ministers are articulate, even I have met a few of them. But this is the first time that I have met a Minister who can pick up the right volume of a theological text and at once turn to the right page.

It is rare to have a Minister stand up for a principle these days. Therefore, even if this was all there was to the matter, it would still be a significant event. But there is much more to it.

First, the cost of having as our Prime Minister a person who does not have an adequate background on public issues is becoming clearer by the week. The most charitable interpretation that one can put on this episode is that Rajiv Gandhi just did not know what he was about, that faced with a few demonstrations the Government funkcd, that, in a panic, it thought that the only way to buy peace was to strike a deal with the obscurantists. Because of his lack of background the Prime Minister does not seem to be able to appreciate the point of principle involved in an issue or the wider implications of a step.

But the episode reveals something even more disturbing. The Government remains what it was to begin with—a Prime Minister, a

cousin, and one school-friend. Today one Minister after another says in private how he regrets the Bill, but he says nothing in public. (The Bill was not considered by the Council of Ministers at all before it was introduced in the Lok Sabha. It was put to the Council after it had been introduced by A.K. Sen on 25 February, and then it was, of course, presented as a *fait accompli*.) In this case even the Prime Minister and his two closest associates do not seem to enter a defence of the measure in private. It is as if the Government is sleep-walking. They speak of 'the unfortunate situation that has arisen', of 'compulsions'. 'It was a political decision,' the Prime Minister at last told the Congress Parliamentary party on 28 February.

There is, of course, a lack of background, and of preparation on public issues. But there is also an obstinacy. 'The moving finger having writ, moves on,' we are being told, 'Nor all thy piety nor wit...'

There is moreover no question of elementary loyalty. A colleague is encouraged to take a stand. The stand, in some myopic vision, later seems inconvenient. He is dumped. And there is the incipient chicanery: 'Leaders of the community have been consulted.' In fact all that has been done is that a deal has been made with the obscurantists. 'A comprehensive background paper will be circulated setting out provisions of the law as they prevail in Islamic countries.' No paper is circulated. 'There was some delay on this matter on our part,' says the Prime Minister. That is not what I hear. My information is that the material was collected, and it was ready. It was collected in part by our embassies in Muslim countries, I am told. But it showed that one Muslim country after another had in fact modernised its family laws. That is why the promised paper was not circulated. And it stands to reason. A Prime Minister who is so particular about sticking to 'time-bound programmes' is not likely to have so lightly forgotten his pledge to circulate the background paper. The provision about wakf boards is touted when in fact Arun Nehru, A.K. Sen, Arjun Singh, among others, know that these boards are in no position to help indigent, castaway women. Once again the Government is dressing its funk in principle, this time in the primacy it says it has always accorded to the views of the leaders of the community.

The signal will not be lost on anyone. Certainly not in Punjab. Having expressed so much solicitude for the personal law of the Muslims, how will this Government deny the demand for a separate 'Sikh personal law' that the Akalis had put forward and which is duly listed in

the official White Paper on the Punjab agitation? And surely if our Parliament is to codify personal laws of different religious communities, it must be guided by the clerics of each community. But it is the Parliament of what the Constitution describes as a Sovereign Socialist Democratic Republic, it is a Parliament that is by the same Constitution enjoined, as much as each of the citizens who elect it, to 'endeavour to secure for the citizens a uniform civil code throughout the territory of India', 'to renounce practices derogatory to the dignity of women', and 'to develop the scientific temper, humanism and the spirit of inquiry and reform'.

The Ministry's View

BANATWALA'S contention was in effect that sections 125 and 127 of the Criminal Procedure Code must be amended to ensure that a divorced Muslim woman should have no right whatsoever to claim even the most niggardly maintenance after the period of *iddat*, which is around three months.

Section 125 (which corresponds to section 488 of the old Cr. P.C. of 1898) is a very mild provision. Under it a magistrate may ask a husband to provide up to a maximum of Rs 500 a month for the maintenance of his wife, provided two conditions are fulfilled: the magistrate must satisfy himself, first, that the husband has 'sufficient means', and, second, that the wife is 'unable to maintain herself'.

It had been contended that section 488 of the old Cr. P.C. on which section 125 of the new Cr. P.C. is based did not apply to Muslim husbands. The matter was settled by Justice Krishna Iyer, then a judge of the Kerala High Court, in 1970. He held:

The Indian Constitution directs that the state should endeavour to have a uniform civil code applicable to the entire Indian community, and indeed, when motivated by a high public policy, section 488 has made such a law. It would be improper for an Indian court to exclude any section of the community born and bred upon Indian soil from the benefit of that law.

The subsequent history is recounted compactly in a standard book on Muslim personal law (Tahir Mahmood, *Muslim Personal Law*, 1983). The original edition of the book had a chapter with many

progressive things to say about moving towards a common civil code; in the new edition the author noted: 'On a deeper study of the subject I realised that time had not yet come for me to formulate a final opinion on certain points covered by the book,' and therefore dropped the entire chapter from the book. Dr Mahmood records what happened:

In 1973 when a comprehensive Bill for the revision of the Criminal Procedure Code was moved in Parliament, section 488(3) was sought to be re-enacted with a modification to the effect that the courts could make an order for maintenance in favour of a divorced wife also. The proposed modification was vehemently opposed by various sections of orthodox Muslims on the ground that under Islamic law a husband is bound to maintain a divorced wife only during the period of *iddat* (nearly three months) and not thereafter. Numerous articles appeared in the Urdu press opposing the proposed amendment of section 488 (3). *The opponents of the new measure took advantage of the political situation prevailing at that time in the country. They succeeded in capitalizing on it and, at the instance of the ruling party Parliament chose to budge.* As a rare instance in the legislative history of India discussion on the draft of the (new) Criminal Procedure Code was reopened in Parliament at a very unusual stage. The provision as finally enacted laid down that though the courts could grant maintenance to a divorced wife, at the time of so doing they should give due consideration to whether she had already realised from her husband in full her post-divorce entitlement under the personal law of the parties. This was obviously meant to protect Muslim personal law on the point as traditionally interpreted. The way in which the amendment as originally proposed was modified, seemingly satisfied the orthodox Muslims.

The concession was apparently a severe blow to Muslim women, and it certainly put them in a position far inferior to that of other women in India.

In a series of subsequent judgments, however, the courts held that the compromise did not snuff out the rights of indigent Muslim women who had been cast off by their husbands.

In 1979 the Allahabad High Court held that section 127(3), which

was the concession that the fundamentalists had been able to extract from a beleaguered Government, in fact 'grants *additional rights* to a divorced Muslim woman for receiving maintenance beyond the period of *iddat* till such time as she has not married after her divorce. This additional benefit does not conflict with the right which already accrues to her under Muslim law.'

In 1980 the Supreme Court pinpointed the matter further. It held that section 125 would not apply only 'on proof of payment of a sum stipulated by customary or personal law *whose quantum is more or less sufficient to do duty for maintenance allowance*'.

Now, Muslim personal law requires only that the Mahr be paid. It was argued on the part of Muslim husbands that, as they had paid the Mahr, section 127(3)(b) extinguished such obligation as may fall upon them under section 125.

The courts held that this was not so. The Mahr, they specified, is an amount that the husband agrees to pay at the time of marriage out of regard for the bride. It has to do with the conjugal life that follows upon marriage. It has nothing to do with divorce and the obligations that must follow upon it. Mahr is not arrived at with any reference to what the wife would require for maintenance should she be divorced. As the Supreme Court said. 'The quintessence of Mahr, whether it is prompt or deferred, is clearly not a contemplated quantification of a sum of money in lieu of maintenance upon divorce.'

As Muslim personal law does not require the husband to pay anything to maintain the wife he discards, the courts said, and as the proviso of section 127 (3) (b) comes into operation *only if the wife has under personal law been paid something for maintenance*, there is nothing in Muslim personal law which will exempt the husband from the obligation which is cast upon him by section 125.

The Shah Bano judgment was but a reaffirmation of such expositions of the law.

This was the background to Banatwala's Bill, 'addressed to' the Ministry of Home Affairs.

In its search for the relevant material, the Ministry consulted among others the Law Ministry. In his note dated 25 May 1985, the Legal Advisor to the Law Ministry categorically stated that the Supreme Court had correctly interpreted the law, and opined that 'provisions of maintenance for a divorced wife do not conflict with the Mohammadan personal law'. He cited what Parliament had been told

on behalf of the Government 12 years earlier and concluded: 'A careful reading of the judgment would show that the honourable court has simply interpreted the relevant provision of the Cr. P.C. without any interference with the Muslim personal law as such.'

The Law Secretary was, if anything, even more emphatic. 'The Muslim personal law is of a civil nature whereas section 125 is a provision contained in the Criminal Procedure Code,' he said and added that 'The Bill to amend sections 125 and 127 of Cr.P.C. should be opposed.'

The Law Secretary's note on the file is worth reading in full:

I have perused the judgment of the Supreme Court rendered in Mohd. Ahmed Khan Vs Shah Bano Begum & Ors. with due care and attention. While performing its constitutional duty of interpreting section 125, particularly clause (b) of the explanation to sub-section (1) of the said section, the court has held that a Muslim wife who has been divorced and has not re-married is entitled to maintenance under section 125 and that this provision does not conflict with Muslim personal law. In support of this conclusion, reliance has been placed by the court not only on authoritative commentaries but also on Aiyats No. 241 and 242 from the Holy Quran. According to the court, these Aiyats leave no doubt that the Quran imposes an obligation on a Muslim husband to make provision for or to provide maintenance to the divorced wife. The court has also construed the expression 'Mehr' to mean a sum payable to the wife out of respect to her. Another point decided by the court is regarding the true scope of sub-section (3) (b) of section 127 vis-a-vis the right to claim maintenance by a divorced woman under section 125. The decision of the court cannot be regarded as an encroachment on the Muslim personal law. The Muslim personal law is of a civil nature, whereas, section 125 is a provision contained in the Criminal Procedure Code.

In view of the foregoing, the Bill to amend sections 125 and 127 of Cr.P.C. should be opposed.

In view of the importance and sensitive character of the matter, ministers may also kindly see.

The note was signed by the secretary, B.S. Sekhon, on 31 May 1985.

The opinion was then endorsed by H.R. Bhardwaj, Minister of State for Law on 1 June and by A.K. Sen, the Cabinet Minister, on 2 June.

On the basis of this unanimous opinion of the Law Ministry as well as other material, the Ministry of Home Affairs prepared a comprehensive note. This note, dated 24 July 1985, shows that the judgment of the Supreme Court was only the latest occasion for the fundamentalists to raise a hue and cry. Banatwala had introduced similar Bills in the Lok Sabha in April 1979 and March 1980. The Ministry also recalled that the Committee on the Status of Women had opposed any amendments being made to the Cr.P.C. which would further worsen the position of Muslim women. The Ministry recorded that

The provisions of sections 125 and 127 are a sort of social legislation meant to prevent vagrancy. It does not seem necessary to amend the provisions of section 125 or 127 (3) (b) to nullify the interpretation given by the Supreme Court in the judgment. Further, according to the provision of the section, maintenance allowance will be payable only in cases where the husband is possessed of sufficient means. It should, therefore, not cause any serious burden on the husband of the divorced wife.

In view of all this, the Ministry said, the Bill should *not* be accepted 'either in its present form or in any modified form'. So emphatic was its view that it said that even if an effort was made to keep the Bill alive by sending it to a select or joint committee or by having it circulated to elicit public opinion, that too should be rejected.

Once again, both because of the unambiguous nature of the views expressed and the background information it contains, the relevant portions of the note are worth reading in full.

Section 125 of the new Cr.P.C. relates to the grant of maintenance to wives, etc., and corresponds to section 288 of the repealed Code of Criminal Procedure, 1898. Under the old section 488, if a person having sufficient means neglected or refused to maintain his wife, a magistrate could order the payment of maintenance to her in summary proceedings. This right was available only to the wife and so a person could deprive a woman of her maintenance by divorcing her, even if proceedings had already been instituted under section 488. The provision thus

had serious limitations in so far as poor divorced women particularly of the Muslim community in which a divorce can be brought about suddenly.

The joint committee of Parliament on the Code of Criminal Procedure Bill, 1970, considered the provision of section 488, and the hardship which it caused to the Muslim women. The joint committee decided that the benefit of the provision should be extended to a woman who has been divorced by her husband so long as she had not remarried after divorce. Accordingly, the definition of 'wife' was added in the bill. As reported by the joint committee (clause 125), 'wife' was defined as including a woman who has been divorced or has obtained a divorce from her husband and has not remarried. The provision was passed by the Rajya Sabha and the Lok Sabha. But immediately after the adoption of all the clauses of the bill in the Lok Sabha, the Government requested for reconsideration. In order to allay the fears of the Muslim community that the bill interfered with their personal law, an amendment was moved to clause 127 of the bill. It enabled the magistrate to cancel the order for maintenance if the woman had received the whole or any sum agreed to be paid to her on divorce. The observations made by the then MHA [Minister for Home Affairs] and Shri Jyotirmoy Bosu during the debate in the Lok Sabha on 1 December 1973, on the amendment to substitute sub-section (3) of section 127 by another sub-section are given below:

Shri Ram Niwas Mirdha: 'I will tell you the purpose of this amendment.

'As I said, under customary or personal law of Muslim communities, certain sums are due to divorced women. Once they are paid, the magistrate's order giving maintenance could be cancelled. Now, whether the maintenance should be reasonable or unreasonable, is not the point. The hon. member has not disputed this. He has said that it should be reasonable and it should be given in that light. I am not in the position of accepting the hon. member's own view and commentary on the Holy Quran.'

Shri Jyotirmoy Bosu: 'I quoted the translation as done by Allama Yusuf Ali which reads: "For divorced women maintenance should be provided on a reasonable scale." This is the duty of the righteous, right-thinking person. This is very clear, absolutely

clear and crystal clear. The Holy Quran clearly lays down that a right-thinking person will give adequate money to the divorced lady to live and survive.'

Shri Ram Niwas Mirdha: 'If that holds good, this provision may not come into operation. This provision was considered sufficient to take care of the special arrangements between the parties and under the personal law of Muslims and was incorporated in sub-section (3) of section 127.'

Thus the provision in the new code is that under section 125 Cr.P.C. if any person having sufficient means neglects or refuses to maintain his wife, unable to maintain herself, a magistrate of the first class may, upon proof of refusal, order such person to pay maintenance to his wife at such monthly rate not exceeding Rs 500 in the whole, as such magistrate thinks fit. 'Wife' under this section, has been defined as including a woman who has been divorced by or has obtained a divorce from her husband and has not remarried...

The Supreme Court in *Bai Tahira Vs Ali Hussain* (AIR 1979 SC 362) has held that no person can claim under section 127 (3) (b) absolution from his obligation under section 125 towards a divorced woman, except on proof of payment of sum stipulated by customary or personal law whose quantum is more or less sufficient to do duty for maintenance allowance and is not illusory. Justice Krishna Iyer delivering his judgment observed: 'The payment of illusory amounts by way of customary or personal law requirement will be considered in the reduction of maintenance rate but cannot annihilate that rate unless it is a reasonable substitute. The legal sanctity of the payment is certified by the fulfilment of the social obligation not by a ritual exercise rooted in custom.'

It is to this interpretation that Shri Banatwala, M.P., has taken objection. He has, therefore, suggested that a new sub-section should be inserted to section 125 Cr.P.C. to the effect that no woman who has been divorced by, or has obtained a divorce from, her husband shall be entitled to receive an allowance, if she has received, or if she has been offered and she has refused, the whole of the sum which under the customary or personal law applicable to her was payable on such divorce and that the quantum of the amount payable shall not be questioned in any

court on any ground. He has also suggested that clause (b) of sub-section (3) of section 127 should be deleted.

The ministry of law, justice and company affairs, who were consulted, expressed the view that the judgment of the Supreme Court in *Bai Tahira vs Ali Hussain* (AIR 1979 SC 362) had not intruded into the personal and customary law applicable to the parties...

The Supreme Court has delivered judgment on 23.4.1985 in Criminal Appeal No. 130/81 (*Mohd. Ali Khan Vs. Shah Bano Begum and others*) wherein the courts have interpreted the provisions of sections 125 and 127 of the Cr.P.C. and reconsidered its earlier judgments in *Bai Tahira* and *Fazlunbi's* cases (copy at Annexure-II). The important observations made by the court are summarised below: (i) section 125 of the Cr.P.C. is truly secular in character and the religion professed by a spouse or by the spouses has no place in the scheme of the provisions; (ii) the liability imposed by section 125 to maintain close relations, who are indigent is founded upon the individual's obligation to the society to prevent vagrancy and destitution; (iii) there is no conflict between the provisions of section 125 and those of the Muslim personal law on the question of Muslim husband's obligation to provide maintenance for a divorced wife, who is unable to maintain herself; (iv) 'Mahr' referred to in section 127 (3) (b) is not a sum payable on divorce 'Mahr' or 'Dower' is a sum of money or other property which the wife is entitled to receive from the husband in consideration of the marriage. If Mahr is an amount which the wife is entitled to receive from the husband in consideration of the marriage, that is the very opposite of the amount being payable in consideration of divorce. The Mahr, according to some, is an obligation imposed upon the husband as a mark of respect for the wife. The provision contained in section 127 (3) (b) is based on the misconception that dower is an amount payable 'on divorce'; (v) Mahr not being payable on divorce, does not fall within the meaning of section 127 (3) (b) of the Cr.P.C.

The provisions of sections 125 and 127 are a sort of social legislation meant to prevent vagrancy. It does not seem necessary to amend the provisions of section 125 or 127 (3) (b) to nullify the interpretation given by the Supreme Court in the judgment.

Further, according to the provision of the section, maintenance allowance will be payable only in cases where the husband is possessed of sufficient means. It should, therefore, not cause any serious burden on the husband of the divorced wife.

In view of the position explained above, it is proposed that the bill may not be accepted either in its present form or in any modified form. The bill may, therefore, be opposed. Any motion and/or amendment which may be moved for the circulation of the bill to elicit public opinion or its reference to select or joint committee may also be opposed.

Here then was the unambiguous and emphatic view of the relevant Ministries. And this was the position that was stated by Arif Mohammad Khan, Minister of State for Home Affairs, on behalf of the Government in his speech in Parliament on 23 August 1985.

As we know, the Government thereafter funked and struck a deal with the fundamentalists. Clearly the Bill must be defeated.

The first step is for Arif Mohammad Khan to testify to the facts. He is still reticent out of a false sense of 'loyalty to the party', false because true loyalty to the party must consist in making sure that the principles on which it was built prevail, and out of a personal regard for Rajiv Gandhi, which regard should in fact lead him to try and restrain the Prime Minister on this matter so that even greater blunders are avoided.

Second, the Opposition owes a duty to the country. To start with, it must have the Government explain why the background paper which had been promised was not circulated, and, assuming that the only cause was, as the Prime Minister put it, 'a little delay on our part', to insist that it be circulated before the Bill is debated. It should also ask the Government to lay before the Parliament the full texts of the opinions prepared by the Home Ministry and the Law Ministry and other relevant documents.

Finally, Congress MPs should stand up. A great deal is at stake. They must demand that they be allowed to vote according to their conscience and then defeat the Bill. Should a whip be issued, they should defy it and defeat the Bill. By doing so, they will be serving the country and incidentally also absolving themselves of Rajiv Gandhi's charge, made in Bombay last December, that the party consists of men and women without character.

A Cynical Fraud

WHAT THE COURTS have held unambiguously about the provisions of sections 125 and 127 (3) (b), the Supreme Court reaffirmed in the Shah Bano case. It isn't just that the Law and Home Ministries—the Ministries that were concerned with the matter—said in their confidential files that the Supreme Court's decision in the Shah Bano case had been correct. The comic fact is that the principal note in the papers that the Government has at last circulated among MPs to justify the new Bill says that the Supreme Court has correctly decided the case!

Here is what it says was the intention behind the new section:

The new provision [i.e. section 127 (3) (b)] was drafted with great care. There was no reference to the word 'Mehtar' (or Dowry) in the provision and this was done deliberately because 'Mehtar' was a sum agreed to at the time of marriage in consideration of conjugal life and had nothing whatever to do with the subject matter of the legislation, namely maintenance, after divorce (which in fact is the opposite of conjugal life).

The draft was intended to provide that if the parties had agreed or their customary or Personal Law so provided, that a specific sum of money should be paid as and by way of maintenance after divorce and if the whole of such sum had been paid, the Magistrate who awarded the maintenance could alter or cancel his order. It is clear that unless there was a specific provision under the customary or Personal Law, providing for maintenance after divorce, section 127 (3) (b) will not come into operation.

Further, this note which has been circulated to justify a Bill that aims at overturning the Shah Bano judgment, concludes by saying:

From the foregoing it will be clear that the interpretation of the Supreme Court in the Shah Bano case does *not* militate against the intention either of the Government or of the Parliament at the time when the provision was enacted or at any earlier stage. It may be noted in this connection that *no new interpretation was adopted in Shah Bano's case*. The matter came up before Courts in a number of cases after 1974, and the Supreme Court has, in

the 2 cases decided in 1979 and 1980, adopted only this interpretation of the provision. No serious objection was taken by any one when these cases were decided.

That is the comic part. The quixotic part is the provision about the wakf boards. The Bill says that in case the parents, brothers, etc. of the cast-off wife cannot maintain her, these boards will. What is a wakf? What are these boards? What is their condition? Can they discharge an open-ended responsibility of this kind?

A Muslim creates a wakf when he endows his property *in perpetuum* and irrevocably for a charitable purpose. There is an important caveat, however. The endowment having been created, and the owner having in a sense irrevocably extinguished his rights over the assets, the benefits from the property may not immediately pass on to the beneficiaries, for instance, the poor for whom the endowment has been created. The endower may, for instance, consecrate the property but reserve the profits for himself, or provide out of it for the current as well as future subsistence, not just of himself, but also of his relatives and descendants. The Prophet is reported to have declared that 'a man providing subsistence for himself, his children and his people and for the maintenance of his and their position, is giving charity in the way of God.' It is also reported that the Prophet 'used to participate in [*lit.* eat out of] the produce of the lands dedicated by him....' Therefore, it has been held to be lawful for a believer to create a wakf but to simultaneously lay down that the manager—the *mutawalli*—he appoints, 'will pass the produce to me while I live, then after me to my child and my child's child and their *nasl* forever, while there are any,' and that *only after that* would the proceeds go to the poor. (On all this see the authoritative exposition of Syed Ameer Ali, *Mahommedan Law*, Volume 1, Thacker, Spink & Co, 1912; specially chapters X and XI; the foregoing quotations are from pp. 281-2.)

We do not quite know how many wakfs there are in India at present. For twenty years they have been estimated to number around a lakh. Their properties have been variously estimated to be worth anywhere between Rs 150 crores and Rs 700 crores. Similarly, their income has been estimated to be anywhere from five to a potential 25 crores a year.

While wakfs are the creation of pious Muslims, wakf boards, one for each State, are creations of our legislatures. They have been

constituted under Central and State Wakf Acts. There are separate boards for important shrines, most notably the *dargah* at Ajmer. There are also local wakf committees. Members of all these are partly nominated and partly elected.

The boards have been set up to ensure that the wakfs are managed properly. The wakfs in turn are supposed to contribute five to six per cent of their net income to the boards.

At the apex—although it is only an advisory body—is the Central Wakf Council. It is meant to advise the Central Government on policy, and also to undertake a few welfare schemes directly. The wakf boards are supposed to contribute one per cent of the net income of the wakfs in their jurisdiction to the Council for its expenses and schemes. In 1984-5 it received about Rs 6 lakhs on this account, and Rs 50 lakhs as a grant from the Central Government. (The boards receive their subsidy from the respective States.)

In the last twenty years every single study which has examined the wakfs has concluded, to use one of the milder expressions that the evidence calls forth, that they are in a terrible, perhaps an irretrievable mess. In the view of one and all, the person who has done the most to reduce them to their sorry state is the one who was supposed to have managed the properties on behalf of God, the *mutawalli* himself.

The Wakf Inquiry Committee which submitted its final report in 1976 correctly called him 'the king-pin of wakf administration'. It noted that 'with the lowering of the general standards of morality and integrity in all sections of society, the increasing tempo of materialism, and dilution of spiritual values, the number of black sheep among the *mutawallis* have naturally grown enormously during the past few decades.' It recalled how sky-rocketing land prices and the like had 'put a premium on temptation.' 'During all our tours of the states,' it said, 'all sections of Muslim community have represented to us hundreds of instances of illegal alienation and transfer of wakf properties by the *mutawallis* and with their connivance an equally large number of unauthorized occupation by squatters....' It talked of thousands of instances in which they had wilfully concealed the wakfs and not registered them. It talked of their having 'flagrantly ignored' the requirements of law, of their 'playing so much havoc with the wakfs and of making a lot of money out of it'.

While every *mutawalli* was supposed to submit the budget of the wakf to the wakf board of the State, the Committee recorded that 'the

percentage of compliance in this regard is not even point nought one per cent.' It noted that while the law ostensibly contained many safeguards against selling, leasing, mortgaging the land, etc. of the wakfs, the *mutawallis* had been circumventing these 'easily and successfully'. So extensive and ingenious were their violations, for instance on the matter of leasing out the lands surreptitiously, that the Committee said, 'No statutory provision, howsoever perfectly worded, can meet all the contingencies and the contrivances that are being adopted and will be continued to be adopted by the *mutawalli* to circumvent the law.'

The situation—not just in relation to *mutawallis* but the boards too—is just as bad today as it was ten years ago when the Committee examined it. The remarks of one Muslim MP after another during the discussions in the Rajya Sabha and the Lok Sabha on 23 July and 27 August 1984, when amendments to the Central Wakf Act were being discussed, testify to this.

Ghulam Rasool Kar said, 'I feel that wakf properties have come into the hands of persons who, by exploiting religion, want to influence and overawe the Government.' They were such clever persons, he said, that they were inflaming Muslim sentiments to further their personal interests, to fortify their hold on the chair. He spoke of a *dargah* in Kashmir whose income of Rs one to one and a half crores was being used, he said, 'for political exploitation'. The persons controlling wakf properties, he said, looked upon them and were using them as their personal property, as their *jagirs*.

Maulana Asarulla Haq testified that 'thousands of lakhs' were being received at the *dargahs*. 'But we know well,' he said, 'that from this lakhs are embezzled, people pocket them.'

In the Lok Sabha, Syed Masudal Hossain was incensed enough to exclaim, 'Yes, some *mutawallis* should go to hell. For some *mutawallis* wakf properties have become a personal business. Allah does not come and gobble the land that is given in the name of Allah. The *mutawallis* gobble it up.'

In brief, while many pious Muslims have created wakfs for charity, the wakfs have become instead a poorly managed real estate business, a business in the hands of unscrupulous agents who have used the cloak that they are discharging a religious function to violate the law, Islamic as much as secular.

The wakf boards have been constituted to ensure that the wakfs are

well and faithfully administered. Instead, the Union Minister for Wakf Boards said in Bhopal on 30 April 1983, they have become 'dens of corruption'. He cited the instance of a wakf property worth Rs seven crores which had been leased for 99 years on terms that would yield an income of only Rs 2.5 lakhs over the entire period.

In the 1984 debates, Maulana Asarulla Haq cited as typical an instance from his personal knowledge: a flood washed away a graveyard; the Government gave a valuable piece of land to make up the loss; instead of using it as a graveyard, the wakf committee carved it into plots and earned a lot of money by selling these; in addition lakhs were made, he said, by using 'lement' instead of cement for constructing the houses.

Assad Madni charged that 'persons are being appointed to wakf boards because of their contacts. There is no category, there are no criteria for selecting them. Those who auction off and have auctioned off crores worth of property are sitting in the wakf boards.' 'They are appointed to the boards,' he said, and then, 'through the wakf boards, help is taken for elections and politics. This is the state of affairs.' The nominations had ruined the boards, he said, and the boards had ruined property worth hundreds of crores which had not been destroyed even by the Partition.

Rafiq Alam said that persons who were appointed to the boards had nothing to do with wakfs. Their sole concern was to further their personal ends and to see how they can swallow the property.

Abdul Rashid Qabli complained of the manner in which politics marred the boards and he dilated upon the consequences.

In all this the MPs were once again confirming the sorry state that the Wakf Inquiry Committee had documented.

The wakf boards have admitted in their replies to our queries, that they have not been able to perform even a few of the most important duties and responsibilities entrusted to them under the Central Wakf Act, such as inspection of major wakfs, framing of proper schemes, carrying out the audit of at least five per cent of the wakfs under their jurisdiction, with the result that almost all the statutory provisions of the Act have remained a dead letter all these years.

For instance, on the matter of inspecting accounts, it noted that the

boards had not been able to inspect the accounts of even one per cent of the wakfs in their charge. As noted earlier, in only 'point nought one per cent' of the cases had the *mutawallis* submitted budgets, and even these the boards had not examined. It noted that while there were 'tall orders' in the law, in fact 'in the absence of a proper machinery of control and supervision, coupled with the paucity of staff and its brazen inefficiency, and in the context of several thousands of wakf institutions in regard to which these orders have to be complied with, it is no wonder that these sections (on accounts, etc.) have been observed almost in their total breach.'

On an average a board received Rs 2 to 2.5 lakhs, it noted, almost all of which was spent on the Travel Allowance and Dearness Allowance of the members.

The Committee recounted the most distressing facts even about boards such as those of Tamil Nadu and Andhra which it called 'the better of the worse'. Its narrative of 'the problem boards' like Punjab and Delhi was of course even more dismal.

The wakfs as well as the boards are embroiled in disputes of several kinds. As the Committee noted, 'There is no gainsaying the fact that litigation has virtually become a festering wound which is eating into the very vitals of wakfs.' Often the disputes go beyond mere litigation. In 1975 the dispute between the Delhi wakf board and the Imam of Jama Masjid resulted in an enormous riot that left ten dead and a hundred injured.

'As far as the future is concerned,' the Wakf Inquiry Committee pointed out, 'we cannot envisage that large sized wakfs will be created.' The Committee held that 'the steady and continuing deterioration in the economic conditions of the Muslim community' would ensure this dismal prognosis. One can think of several other factors also.

And as for the existing wakfs, they have remained unamenable to reform. In fact, whenever the Government has intervened (for instance, when it has had to supersede patently corrupt, fractious and mismanaged boards), whenever it has tried to acquire the powers to supervise the boards effectively (for instance, when in 1984 it urged additional powers for the commissioners), it has been accused of interfering in the religious affairs of Muslims, of trying to 'nationalise' a religious institution 'through the back-door'.

Nor can any non-Muslim be blamed for the plight of the wakfs. While piloting the Bill on 23 July 1984, the Law Minister told the

Rajya Sabha at some length and with some emphasis, 'But you have to admit, though I do not want to say it, our brothers, our Muslim brothers, our *mutawallis*, our board members are the ones who have done all this.' 'The anger you have', he told the Muslim members, 'the anger you have in your heart is very little against me, it is largely against your associates.' 'You pointed to what happened in Punjab, Haryana,' he said. 'Who were the members? Your Muslim brothers and mine.'

This is the bitter truth. But unfortunately no reform movement has arisen among Muslims to set the wakfs right. Muslim 'leaders', i.e. Muslim MPs, office bearers of the Muslim League, heads of Muslim religious and theological organizations, have instead been asking for three things: first, that larger subsidies be given to the wakf boards; second, that the wakfs be granted various kinds of exemptions—from income tax, from land ceiling laws, from the Rent Control Act, from the limitation that cases against persons who have occupied one's land be filed within a specified period; third, even as some have accused the Government of trying to nationalise the boards by the back-door, others have been urging the Government to do more to improve the management of the boards and the wakfs and to do so directly. For instance, they have urged that the Government directly strengthen the boards' capacities to audit accounts, that the district administrators be instructed that getting wakf properties vacated is their personal responsibility, etc.

The minor point in all this is that many of those who are now shouting that the Supreme Court has interfered in Muslim personal law, have themselves been clamouring that the Government should intervene directly, that, to use the expression that Ghulam Rasool Kar used, not once but four times in the Rajya Sabha, it should do so with 'iron hands', with 'firm hands', that it should use harshness—*sakhti*—to rectify this very integral part of the same Muslim personal law. The main point in the context of the present Bill however is that nothing has as yet been done to improve the functioning of the wakfs or the boards. In these circumstances to say, as the Bill does, that if the parents, etc. cannot provide for the cast-off wife, the wakf boards will, and to tout this provision as if it is a remedy that will really be available to an indigent, cast-off woman is as cynical a fraud upon our people as can be imagined.

The reasons for the fraud are plain. As putting the responsibility of looking after the cast-off wife on the parents, etc. was patently

inadequate, the Government wanted to pretend that it was also providing a reserve, 'institutional' solution. The fundamentalists were as keen on the pretence. From their point of view the main thing was that the Government had recognised their right to lay down the law. But there is a somewhat more down to earth reason too. The wakf boards have no money. The Parliament having put this new responsibility on them, the Government must increase the subsidies to the boards. Leaders in control of the wakf boards are reported to have already asked the Government to give the boards Rs 50 crores a year on this account!

Should this Bill be passed, Government funds will end up fortifying the hold of what official committees, Government as well as Muslim MPs, etc. have themselves testified are the venal, corrupt and retrograde elements in our society, and the game will not stop there. After all, how can it be that our secular state will provide its funds to look after divorced *Muslim* women alone? Why not divorced Sikh, Christian, Parsi, or, for that matter, divorced Hindu women also?

Arguments of the Managers

MANAGERS OF THE Congress-I have begun a concerted campaign to inveigle MPs and others into supporting the Muslim Women's Bill. Plain falsehoods are being purveyed as facts. Arguments that are specious in the extreme are being peddled as the genuine stuff.

Each of these must be examined because it bears on the issue, and because it gives us a glimpse into the nature of our rulers. Do they know what they are talking about? Are they so naive as to think that such grave matters can be handled by clever drafting? How far will they go to find alibis for a mistake? Is there a pattern here? A mistake is made in Kashmir. Two years must pass, an entire part of the country must be brought to the brink of concluding that it cannot get justice in the country, the situation must go completely out of hand before the mistake is rectified. A question is mishandled in Gujarat. Two or three hundred must die, the apparatus of governance must be brought to a point where every part of it is fighting another, and all parts of it are fighting the people, before the obvious thing is done.

The assertions, then, by turn, and the facts about each of them.

'But at the time of framing our Constitution we gave an undertaking that personal laws will not be interfered with.'

Quite the contrary. The decision of the Constituent Assembly was that personal laws of different communities *will* continue to be reformed and that we *will* move towards a single civil code common to all our citizens. This decision is embodied in Article 44 of the Constitution.

Since then the duty to remove injustices, etc. from archaic personal laws has become all the greater. Article 51A now specifies our Fundamental Duties. Among these, as we have noted above are the following:

- to renounce practices derogatory to the dignity of women;
- to develop the scientific temper, humanism and the spirit of inquiry and reform.

The former binds us to doing away with polygamy, doing away with the absolute, arbitrary power to discard wives, etc., features that are parts of the Shariat and which are derogatory to the dignity of women, indeed which reduce the wife to living in terror of the husband's whim. The latter binds us to countering, and not pandering to religious obscurantists.

'But the Constitution guarantees freedom of religion and therefore we cannot interfere with personal law.'

Articles 25 and 26 are the ones that guarantee freedom of religion for each of us. They specifically state that the freedom to practise a religion is subject to public order, morality and health. In addition Article 25 specifies *inter alia* that nothing in the Article shall prevent the State from making any law regulating or restricting any secular activity, and from providing for social welfare and reform.

Therefore, even in the context of the Articles that deal specifically with the Right to Freedom of Religion, the authority of the State to reform personal laws is threefold:

- If a personal law is injurious to public order, morality or health, the State has the clear authority to alter it, even if it is an essential part of religion.
- The State has overriding authority to pass laws for ensuring social welfare and reform.
- It has overriding authority to regulate any secular activity associated with religious practice; as is often emphasised, in Islam, marriage is a contract and not a sacrament.

'But we have never interfered with Muslim personal law.'

Quite the contrary. For more than a century now laws have been enacted that have modified, circumscribed and completely replaced provisions of the Shariat.

As is well known, and has been noted above, the Shariat is an integral code. Provisions regarding what we now call 'criminal law' or the 'law of evidence' are as germane to it as the provisions regarding 'personal law'. Muslim criminal law was abolished by the Indian Penal Code of 1860 and the Criminal Procedure Code of 1898, Muslim law of evidence by the Indian Evidence Act of 1872. And so on.

On the civil side too, one enactment after another has altered, circumscribed and abrogated Muslim personal law. Two examples from the laws relating to matrimonial affairs that should suffice have already been cited. Child marriage was as common among Muslims as it was among Hindus. The Child Marriages Restraint Act of 1929 made such marriages illegal for Muslims as much as for others. Similarly, under Islamic law the husband has absolute, arbitrary power to cast his wife out. The wife has no corresponding power to free herself from even the cruellest of husbands. The Dissolution of Muslim Marriages Act of 1939 took a giant step towards redressing this imbalance by specifying a number of circumstances in which a Muslim wife could initiate divorce proceedings.

The reform has continued throughout. Just a year and a half ago our Parliament for the fourth time amended the Central Wakf Act of 1954.

'But with this new Bill the Parliament is legislating Muslim personal law. This itself is a great advance.'

The right of our Parliament to legislate personal law is well established.

This is how the most recent textbook on Mohammedan law puts, the matter:

The Courts in India have to apply Muslim law *subject to the provisions of all those general legislative enactments*, relating to or affecting one or another of the matters in the area of family law and succession, etc....

Numerous legislative enactments and provisions, however, deal in India exclusively with the institutions of Muslim law. While

some of them modify substantive provisions of Muslim law, the rest are of a regulatory nature. *The courts have to apply the classical Muslim law subject to and in accordance with all this legislation.* In no case can a court hold any legislative provision to be *ultra vires* the classical Muslim law, notwithstanding the contrary opinion of the theologians. *Legislation, thus, constitutes the supreme source of Muslim law in India.*

The author is the same Tahir Mahmood I have mentioned before, a Muslim academic, and the very man who, the government says, drew up drafts of the new Bill! We do not need a bad law to once again affirm the right and authority that are already so well established.

'But the Supreme Court was wrong to go about interpreting the Quran. Personal law can only be interpreted by religious authorities.'

First, the Supreme Court did not arrive at the Shah Bano judgment by interpreting the Quran. It did so on the basis of sections 125 and 127(3)(b) of the Criminal Procedure Code. All that the Court said was that it was fortified in the decision by the incidental fact that the decision conformed to the Shariat. As we know by now, the Law and Home Ministries, and also the briefing note that has been circulated to the MPs by the Government itself, have emphatically stated that this is all that the Court did.

Second, the verses from the Quran were introduced into the proceedings not by the Court *suo moto*, but by the counsel for the Muslim Personal Law Board, which was intervening against Shah Bano. The Court at once asked him whether the translation was authentic. Yes, he said emphatically, it is, adding that after all he was citing it himself. On examining the verses and hearing the further citations by the counsel for Shah Bano, the Court found that the verses led to a conclusion which was the exact opposite of what the Muslim Personal Law Board had sought to urge by bringing the Quran into the argument!

Third, for over a century personal law has been applied and interpreted not by clerics and theologians but by our normal, secular Courts. The jurisdiction of the Qazis and Pandits was abolished over a century ago, the very office of the Pandit or Qazi as assistant-to-the-magistrate was abolished.

That is why cases travelled from magistrates to High Courts, and

thence to the Privy Council. And that is why they travel to the Supreme Court today. In all these cases, passages from the Quran, the *hadis*, from Islamic jurists have been routinely cited to arrive at or to fortify decisions. Often they were cited precisely to lay down what their real meaning was. Much of what we know today as Muslim personal law is the creation of British magistrates, judges, the Privy Council, etc. For that reason till 1947 it was often referred to as 'Anglo-Mohammedan Law'.

'But why did the Court mix up the question of whether or not a Muslim husband has to pay maintenance with whether or not we should have a common civil code?'

That is just amazing. May the Supreme Court, which is there to see that things are done according to the Constitution, not even express the *hope*—and *that is all that the Court did in this case*—that we will act in accordance with an Article of the Constitution? By this manufactured, retrospective hyper-sensitivity, Government spokesmen are just trying to fabricate alibis for their failure to stand up to the fundamentalists. (Incidentally, as Danial Latifi, the senior counsel who appeared for Shah Bano, points out in *The Radical Humanist*, he did not introduce the question of a common civil code in the Court. The one who did do it was the counsel for Shah Bano's husband. He is the one who told the court that they, i.e. the husband's side, were for a common civil code applicable to all Indians!)

'But the Bill does not absolve the husband. Section 3(1)(a) has been deliberately drafted to say, a divorced woman shall be entitled to (a) a reasonable and fair provision and maintenance to be made and paid to her within the iddat period by her former husband. It does not say 'for the iddat period', but 'within the iddat period'. We hope the Courts will hold that because of these words the husband must pay for maintenance beyond the iddat also and do so within it.'

The assertion is plain silly. A man divorces a woman when she is, say, twenty-five-years old. Will the section require that he or the Court consult the actuarial tables, estimate the number of years she is liable to live, calculate the amount she will need to maintain herself in the standard of living to which she is now accustomed, multiply these, and that the husband cough up the entire amount within three months?

And what happens if she remarries? Is she then to repay the remaining amount? With interest, surely?

But more than this, there is the scheme of the Bill. This is crystal clear and does not permit the construction that is being put on 'within' rather than 'for'. The Bill clearly divides that post-divorce period into two sub-periods—the three months of *iddat* and the period beyond that. To the former section 3(1)(a) applies, and the responsibility for maintenance is put on the husband. To the latter section 4(1) applies and the responsibility is put on everyone *except* the husband. This is clearly stated in the respective sections and I just cannot understand how a patently misleading construction is being put out to the MPs.

'Instead of limiting the responsibility for maintaining the divorced woman to just one husband, the Bill broad-bases it: it makes a number of relatives responsible for maintaining her.'

The assertion fails both on grounds of principle and practicality.

The point of principle is as follows: a Muslim husband has absolute, arbitrary and exclusive power to cast his wife aside with or without assigning any reason. Should he not have some corresponding obligation towards her? The Courts have said 'Yes'. The Bill says, 'No, nothing beyond three months, nothing whatsoever, whatever the respective circumstances of the husband and the wife he discards.' This is unjust in the extreme.

The impracticality is also patent. A case with just one respondent—the husband—takes a decade. We can imagine what will happen when there are three or four respondents, as there often will be under the Bill.

'But the Bill says that the magistrate will issue his order within one month of the woman filing her application. This is a great advance.'

An outright lie, if ever there was one. First, the clause (3.3) in which this one month limit is specified applies only to the maintenance to be provided during the three-month *iddat* period. Nothing is specified about the time within which the magistrate is to issue his order for the post-*iddat* period.

Second, implicit in the Bill itself is the acknowledgement that while the one-month limit is laid down, it is seldom going to be met even for maintenance in the three months of *iddat*! Notice how section (3)

concludes: 'Provided that if the Magistrate finds it impracticable to dispose of the application within the said period, he may for reasons to be recorded by him, dispose of the said application after the period.'

It is disingenuous in the circumstances to tout the one-month limit as a great boon that the Bill provides to women.

'But no other country has provided for maintenance. This Bill at least does that.'

This too is untrue.

- The Tunisian law provides that where the husband (or wife) is the one who insists on a divorce, the court shall decree the compensation that he (or she) shall pay.
- The Moroccan law requires the husband to pay the wife a parting amount 'in proportion to his means and her circumstances'.
- In Egypt too the woman upon divorce is now entitled to the Mahr, as well as an amount to cover maintenance for two years.
- Article 273 of the Constitution of the Ismaili Khojas of East Africa provides that, 'If, upon dissolution of a marriage, the Council is of the opinion that the husband was responsible for the breaking up of the marriage, it may award to the wife such monetary compensation as it may deem just and reasonable in addition to the *Mehr*.'

There are other instances also. Why must Muslim women in India not be entitled to what Muslim women elsewhere already have by rights? Why must women in India who happen to be Muslim not be entitled to what women who are not Muslim are entitled to?

Even more important than these specific provisions is the fact that all these countries—from Tunisia to Indonesia—have legislated comprehensive reforms in the marriage-divorce laws and that what has been done on maintenance is a *part of that package*. The proposed Bill comes as an isolated measure with no prospect of the comprehensive reform of marriage-divorce laws. And it is retrograde in itself.

In contrast to what has been done in all these countries this Bill heaps yet another hardship on women. As it is, to our shame and misfortune, the birth of a daughter is regarded among millions as a curse. Now it will be regarded as doubly so: the parents will say, 'Not only have we to bring her up for fifteen years only to have her go elsewhere, she may be thrown back at us at any time.'

'But that is just the point. This Bill will encourage parents to have the

marriage of their daughter registered under the Special Marriages Act so that she will be at once liberated from the thrall of the religious personal laws.'

I am mystified to hear this argument. It would betoken a greater cunning than I think the Government would like us to believe it possesses. In any case, one cannot simultaneously claim that the Bill is full of boons for the wife, and also claim that it inflicts such prospective hardships on her and the parents that they will be induced to register the marriage under secular laws. And this quite apart from the fact that, should they insist on doing so, they are liable to have even greater difficulties in locating a husband for their daughter.

'But there is a limit to what a Government headed by a Hindu Prime Minister can do in reforming Muslim law.'

This is nothing but an argument of convenience. The Prime Minister is not a practising Hindu. He does not perceive himself as one. The country does not perceive him as one. We are Indians and should act as such.

Moreover, no one is asking the Prime Minister to rush about revolutionising Muslim law. The point about this Bill is that it arrests, it turns back the reform that was taking place on its own, gradually, step by step.

'But the Prime Minister's prestige is at stake.'

This is being presented as the final, conclusive argument to Congressmen.

A person—even a Prime Minister—gains in 'prestige' by acknowledging an error, by rectifying it. Second, those who are so concerned about the Prime Minister's prestige had better assess what it will be six months or a year *after* the Bill is enacted and its consequences—in particular, its consequence in legitimising Hindu fundamentalists—take shape.

Most important, no one's prestige—not even that of the country's Prime Minister—can be a reason for doing an unjust thing, for doing the country wrong.

None of the assertions survives even elementary scrutiny. A mistake has been made. That is unfortunate. But these things happen. Much the worse thing to do is to persist in a mistake. The ill-effects are compounded. And in this case the consequences will certainly be very

grave. Inevitably, step by fateful step we will be certifying the 'separate nations' theory.

It is indeed a moment of truth.

This chapter is based on articles written in February and March 1986. The last section was based on arguments that the Prime Minister had been furnished with and which he himself pressed upon several persons. The Bill was of course passed, but the passage was unique. The Congress felt it necessary to issue a three-line whip ordering each Congress MP to vote for the Bill. Accordingly, all, including those who spoke against it in the debate, including Arif Mohammed Khan himself, voted for it.

CHAPTER IV

Lessons from the Punjab

NOW THAT THE ARMY has broken the back of the terrorists in the Punjab, everyone, especially Mrs Gandhi & Co. who have been dithering for three long years, whose dithering caused the monster to grow so large and to exact such a heavy toll in blood, will grab the credit. 'Victory has a thousand fathers...'

But more important is the certain reaction of the country. The sense of relief, of reprieve, is always directly proportional to the intensity of fear, frustration, danger that preceded it. And this time round—especially in the North—fear, frustration, danger were indeed intense. With the Army having eliminated the immediate problem, we are now apt to swing in the other direction, to lose ourselves in a delusion of reprieve, to forget that whatever brought it upon us, that whatever let it fester so long and grow so large, continues.

Hence the need to draw lessons and attend to them.

1. Bhindranwale was the nemesis of the politics of grievance on the one hand and of appeasement and pandering on the other. He like others mobilised his followers around grievances. But such politics is a spiral: at first, genuine hardships stare the leader in the face, he mobilises followers to redress them; these exhausted, he sets out to discover

every possible grievance he can; and, next, he invents such grievances as he must.

In this, the extremist is the measure of commitment to the cause. And he must keep ahead of his past. At each moment he must be more strident, more enraged at the continuing 'hardships' of his followers, at each moment he must be prepared to use more extreme measures, to inflict a higher penalty than the last. By the end he is riding a tiger that he cannot dismount.

The moderates must keep up with the extremist, and to do this they, too, must mouth more and more strident demands. Thus, by the end, those who were called 'the moderates' among the Akalis were demanding a separate personal law for the Sikhs, they were burning the Constitution, they were condoning by their absolute silence every murder by the extremists from whom they wanted the country to distinguish them.

The longer the process is allowed to last, the more terrible its toll. As the moderates, as much as the extremists, must at every moment make the *unfulfilled* demands the focus of their crusade, their followers, even though they belong to the most privileged group, come actually to believe that they are in fact being persecuted. Aggrieved, they become hostile to the community as a whole, and the community, incensed at their increasing rapacity, to them. Hence partition is created in the hearts of the people.

At no point is the demand of the moment the issue. It is but a device. The moment one is met, another, a more far-reaching one, must be put forward. And each time a concession is made it is credited, not to the moderates whom you hope to strengthen by routing the concession through them, but to the extremists, fear of whom makes you suddenly see justice in demands that thus far you did not think were worth even scoffing at.

Thus, for Mrs Gandhi to have thought that she could 'defuse the situation' by donning *salwar-kameez*, going off to a Gurdwara and announcing that she was accepting 'the religious demands', or that her son could defuse it by going off to another Gurdwara and making a gift of Government land and property was not just cynicism, it was delusion. Similarly, it was delusion for the Opposition to have thought that they could help 'defuse the situation' by treating with 'the moderate' Akalis: the moderates were corks on a torrent.

The first lesson, therefore, is to recognise the certain nemesis of the

politics of grievance, in particular, to recognise that when such politics has crossed the point of no return—that is, when the moderates are panting to keep up with the extremist and the extremist is himself on a tiger that he cannot dismount—one must not waste time on demands. One must recognise the insurrection.

2. In the present case, it was not just the politics of grievance that accounted for the final toll. It was the specific nature of the grievance too. For half a century, the Sikh leaders, solitary figures apart, have been rallying their followers around one cry alone, the paranoid cry, 'The Panth is in danger'.

Orthodoxy is being undermined. It is being undermined by modernisation. The leaders have not railed against modernisation: for one thing, the Sikhs have themselves been such enthusiastic modernisers and for another, railing against an abstraction such as 'modernisation' does not give one the concrete, specific devil that a leader mobilising followers around grievances needs. Hence the competition, both in inventing dangers to the Panth and in tracing them all to the other, the Hindu: 'The Hindus are out to swallow Sikhism.' Thus, Bhindranwale was just the culmination of a fifty-year lineage.

The grievance around which the followers were being mobilised having thus been declared a religious one—or, to be more precise, one that had to do with religion—it was bound to inflame them more than other secular grievances would have done.

The final toll was higher, not just because of the specific grievance but because of the fundamental tenet of Sikh politics in the last few years—'Politics is for Religion, and Religion is for Politics'—and its basic feature in practice, namely that, contrary to every principle of a secular state, contrary to specific laws, the funds, personnel, premises of religious foundations and places of worship would be used for politics.

Politics and religion have thus become one. The consequences? Passions have been aroused farther than they would have been in a secular cause. Religion has degenerated into the politics of religion, the politics of religion into the politics of money, of smuggling and, finally, of arms.

It is of course true that Bhindranwale and the other terrorists had little to do with the true tenets of Sikhism. But they were *Sikhs*, they used the supposed teaching of the *Sikh* scriptures and the *Sikh* Gurus to mobilise *Sikh* masses. They did all this from *Sikh* places of worship.

It was all a perversion. But the point is that it could not be fought from within the Sikh religious or political establishment. And that was so because Bhindranwale had but carried to their logical conclusion the fundamental tenet of Sikh politics—'Politics is for Religion, Religion is for Politics'—and its basic practical feature, that of using the religious infrastructure for political purposes.

Thus, the crucial questions are: Will the latest episode help move us towards some mode of mobilising followers other than grievances, to an alternative such as idealism? And, in the specific case of Sikhs, will it facilitate or retard the emergence of secular politics? On the first, the episode, dramatising as it does the terrible consequences of the type of politics we have been practising, cannot but nudge us towards another mode, even if only in a negative way. But on the latter, the answer can only be equivocal. For one thing, all must now see more vividly the consequences of inflaming the masses by religious slogans. But on the other side, there are three considerations: for some, at least in the community, there is a new set of martyrs to emulate. Second, the lot from which alone a new secular leadership could have emerged in the immediate future—the moderates—are more thoroughly discredited in the community today than anyone else: many Sikhs feel that these 'moderates' let down the community by not having the courage to stand up to Bhindranwale; others, that they let down the community by not having the courage to die with him. Third, the moderates, now thoroughly discredited, will try to rehabilitate themselves by adopting extremist postures. I believe that as time passes, the first lesson—that of the consequences of inflaming people on religious rhetoric—will prevail. But on one condition—on the condition that we give up the notion that communalism in each community (other than the Hindus) must be fought by persons within that community alone, that if anyone else talks frankly about it, he is a bigot and a communalist himself. As we have seen in this round, and confining oneself to the Punjab example alone, the Sikh liberal—a Khushwant Singh whose courage in opposing Bhindranwale, in educating the country about the evil he was bringing upon us has been exemplary—cannot fight Sikh communalism by himself.

3. The effects that this episode—especially its fiery end—will have on the Sikhs will, of course, go beyond the question of whether the masses should or should not be mobilised around religious rhetoric. I assume that the overwhelming majority of Sikhs disapproved as strongly of

Bhindranwale, his politics, his brand of religion, his ends, his methods as anyone else. I assume this to be true—and am fortified in the assumption by the vivid example of Lt-Gen Ranjit Singh Dayal and his men—and I conclude that the sense of relief, of reprieve will *eventually* be as intense among the majority of the Sikhs as among others.

All this is true. But the effects of such traumatic events—of figures like Bhindranwale, of their meteoric rise and their fiery end—on the collective psychology of a community are complex. Bhindranwale, removing obstacles with such apparent ease, becomes the idol of many who see in him what they would want to be—the strong, mysterious figure who sweeps away obstacles as if they were cobwebs. If Bhindranwale had been a ‘secular terrorist’ he would have become the idol of many such men and women—the young? the lumpen?—across communities. As he thought of himself and projected himself exclusively as a Sikh leader, his appeal was confined to the Sikhs. But that he had an appeal, that he became the idol of many, is undeniable.

And there is also the attraction that ‘success’ exercises—even as we disapprove of what the person is doing we tend vicariously to associate with his ‘success’, especially if he is in some way ‘one of us’. And the feeling of some being ‘us’ and others being ‘them’ has grown to fever pitch in the last two years among Hindus and Sikhs in the Punjab, and (although to a lesser extent) elsewhere.

Therefore, just as I conclude that eventually the overwhelming majority of Sikhs will be relieved, I also conclude that, with Bhindranwale dead, for many this relief is tinged with the feeling that ‘he was one of us,’ that, however wrong-headed, ‘he fought for us’.

Therefore, in a subtle but definite sense many Sikhs, even among those who were opposed to everything Bhindranwale did, must today feel that the community itself has suffered ‘a defeat’, that it has been ‘humiliated’. Just as, eventually, most will feel proud that Ranjit Singh Dayal and his men have cleansed the Gurdwaras and have restored their sanctity, today most feel that Dayal and his men have allowed themselves to be ‘used’ by a ‘Hindu government’ to ‘defeat’ and ‘humiliate’ the Sikhs. The Sikhs are particularly liable to feel humiliated by the events for another reason, one that is specific to the community. They are today no more martial as a community than others: in fact, they are today a community of prosperous peasants, prosperous traders and still more prosperous industrialists. But they have continued to pride themselves on the old notion, ‘One Sikh is the equal of a lakh and

a quarter others.' In some ways, this old notion is the most important element in the Sikh psyche. The defeat and death of such a conspicuous band of Sikhs as Bhindranwale and his cohorts punctures the notion in the mind of Sikhs and is, therefore, liable to be all the more keenly felt. This sense of defeat and humiliation will be compounded by the facts about the extent to which their holiest shrine—a shrine that has been totally under the superintendence and control of persons selected by the community itself—had been put to perverse use. The first impulse will be to reject the evidence: 'The arms have all been planted by the Government.' But as the evidence turns into an undeniable heap—there were the daily executions, after all, the tapes in which Bhindranwale preaches blood and thunder, there was the silence of the head priests, the political leaders, of the community at these murders, at the broadcasting of this poison—as this evidence mounts, denial will turn to defiance: 'Well, so what? It is our Gurdwara and we can do what we want in it.' That this is no more tenable will become evident just as soon: you cannot, after all, maintain that a place is 'the holiest of holies' and simultaneously insist that it can be used for any purpose, however profane. Thus, no veneer will do.

'Why did the Army enter our Gurdwaras?' This is how the resentment is coming out at the moment. But this is just the immediate symbol, merely the peg for it. Once the situation had been allowed to go so far—by the Government which neglected its duty, by society which was unable to shove the Government into doing its job, by the Sikhs who were unable to prevent persons from converting their places of worship into forts for criminals and rebels—there was no alternative to the Army cleaning the places up. This much is patent as can be, and none of those who today parade resentment at the Army action has suggested what else could have been done once the situation had gone this far. (That it had been allowed to go this far is just as important a fact, a vital pointer to our times, and I shall revert to it in a moment.) Thus, the resentment of which we hear so much today arises, not from the Army having eventually entered the Golden Temple and cleaned it up, but from the sort of deeper factors to which I alluded above: from having identified with Bhindranwale, however vicariously, from his having been killed and 'defeated', from having retained a false pride in one's martial temperament and abilities, from the facts that are coming out about the misuse of Gurdwaras and, most of all, from the difficulty of finding a rationalisation for any of this.

Time alone can heal such wounds to the psyche. Time and fairness.

Now that the back of the terrorists has been broken, the issues should be dealt with swiftly and they must be dealt with as issues *per se*. The demands must be dealt with as demands that arise from time to time in any plural, federal polity, not as the demands of this community or that, as the demands of a community that will fly into a rage unless they are conceded or of a community whose ego needs to be assuaged with sops. The river waters question should be referred to the Supreme Court or a tribunal, but the retrograde demand for a separate personal law, the demand that the Gurdwaras Act be extended to vest control of even more Gurdwaras in those who let Gurdwaras become what they did—such demands must be turned down. The country must re-examine many aspects of Centre-State relations but, just as unequivocally, it must turn down the proposition that it is ‘the birthright’ of ‘the Khalsa’ to be ‘pre-eminent’, that to ensure this ‘the New Punjab’ must have the right to have its own constitution and that it must have ‘full powers on all matters save defence, foreign affairs and communications’, and that to achieve these and similar ends the Akalis will use ‘all possible means’—all these being propositions in the Anandpur Sahib Resolution, a resolution not of Bhindranwale but of the ‘moderate’ Akalis. Being patronising, bending backward on these issues will drive the sense of alienation deeper just as surely as being high and mighty would. It also gives many the occasion to conclude, ‘After all, Bhindranwale got us by his death what no one else could.’

At such times the impulse of many of us—and the well-meaning liberal is specially prone to it—is to leave bad enough alone. Throughout 1982 and 1983, as the murders mounted, many used to counsel, ‘The only way is to share power with the Akalis. Whenever they are out of power they create these problems.’ What signal would that give, they were asked, to every group in the country that happened at the moment to be out of power? Apart from that, will you not be giving power, they were asked, to persons—‘the moderates’—who are themselves panting to keep up with the extremists? Once in power, will they not feel compelled to go three-quarters of the distance of the extremists just to keep the latter at bay? There was never an answer, but the chant continued. ‘The Akalis must be inducted into the government. There is no other way to ensure peace.’ ‘The only way,’ others kept saying, ‘is to concede their demands. You don’t know what the Sikhs are like.’ And now many say, ‘You must concede the demands. You do not know how hurt the Sikhs are, how full of

resentment.' Thus, at one moment the demands must be conceded because the Sikhs are a dangerously aggressive lot and need to be placated, at the next the demands must be conceded as they are a dangerously aggrieved lot and need to be assuaged.

The operative impulse in either case is, 'leave bad enough alone'. But in such crises leaving bad alone makes it worse, and much worse, and much more swiftly worse than anyone could have imagined. Some issues—and from the beginning this one has pre-eminently been one of these—can be resolved only by being brought to a head.

Today the *mantra* is 'the healing touch'. Everyone is for applying it. But what does it mean in specifics? Should the Army be called away before even the initial task is complete? Should the facts about the uses to which the Gurdwaras were being put be underplayed? Should the demands be conceded just because the terrorists 'have laid down their lives' and some are reading into this a 'defeat' for the community itself?

May it not be that it is not the community that has been injured but the country? May it not be that the way to healing is for all of us—the Sikhs as much as the non-Sikhs—to first face all the facts about what happened in what were supposed to be places of worship; and then for all of us—the Sikhs as much as the non-Sikhs—to devise ways to ensure that such misuse will not occur again? Does the way to health require pandering to a religious community *qua* religious community or should we use this occasion to scrub out all the things that have been conceded to aggressive religious groups, from the smallest things—the right to blare away through loud-speakers, the right to usurp public land, the right to force processions in ways that endanger the public peace—to the bigger ones—for instance, the right to receive money from foreign sources and to deploy it without the slightest apprehension of public scrutiny?

4. The effect of the recent events on the Muslims will be the least equivocal: 'It could be us tomorrow.' And the danger to guard against will be that many a leader—within the community as well as outside—will exploit this heightened sense of vulnerability to manipulate them.

The immediate reaction among all Hindus will be of reprieve. Yet, for the same reason, namely that the 'them' and 'us' feeling has intensified so much in the last two years, this sense of relief will be tinged with exultation: 'We have taught the Sikhs a lesson today; we'll teach others a lesson tomorrow.' I believe that this vicarious basking in what

the Army has accomplished will subside soon. Hindus, specially in the Punjab, will later recall only how helpless they were in the face of the terrorists, how defenceless they became when the State abdicated its functions. This is the memory that will last, it is the one that will have consequences.

Traditionally, in the Hindu world-view, the State and State power have counted little. And the Hindus have had no central authority, no full time cadre, no armed wing. Along with the inertia of our people, these four features have helped sustain secularism in the country. But subject the Hindus to a few more experiences like the Partition of 1947, like the recent bout of terrorism in the Punjab, and they will conclude that each of these features is actually a weakness, that it leaves them defenceless as individuals and as a community. They will conclude that State power is all, that they must acquire it *qua* Hindu, that they too must have a central authority, their own Akal Takht, that they too must have their full time functionaries paid for by their SGPC who can double up for politics, that they must have their Nihangs.

The only way to keep them from acting on such inferences is to have an effective and truly impartial State. A State that abdicates its functions as it did in the Punjab, a State that out of weakness panders to this community or that and parades this pandering as secularism will certainly put the Hindus in mind of such inferences. And once that happens, you can say goodbye to secularism.

5. For three years the Government was proclaiming, 'We will not enter the Gurdwaras as we do not want to hurt the sentiments of the Sikhs.' This was nothing but a transparent attempt to hide its weakness and dithering behind a principle. But in the end it helped the Army: the repeated statements led the terrorists to concentrate so much of their men and *material* in these sanctuaries that the Army, when it was eventually allowed to strike, was able, at the very first blow, both to knock out their nerve-centre and to break their back. But even if we had been certain that it would not be able to do so, even if we are certain that terrorism is here to stay (and I presume that it is—not so much because there is a new set of 'martyrs' whom some at least will want to emulate, nor because one community is 'hurt', but because our borders and our coasts are now so completely porous, and because the apparatus of governance has been completely undermined), a massive blow had to be struck.

For the problem by the end was not even terrorism but the complete breakdown of the confidence of the people—even of those who man the apparatus of government—in the State itself. The only way to even begin to restore this confidence was a massive blow. And the blow had to be launched irrespective of the cost.

For the past three years the question has not been, 'Who shall have Chandigarh?' but 'Who is the State?' The Gurdwaras had been taken over by persons who were merely using religion. The 'moderates', the SGPC, the head priests had done nothing—out of helplessness, we must assume—to clear the Gurdwaras of such persons. From being places of worship they had become arsenals, they had become places from which and in which criminal operations were mounted, sentences were pronounced, executions were carried out. In short, they had become the headquarters of a State within a State.

The final operation by the Army was thus fully justified.

6. But the portents for the future are three. First, it was found that the Army alone could do the job in the end. What should be the last card—the Army—is turning out in one situation after another to be the only card we have.

Second, just as the final operation was wholly justified, the delay in ordering it was wholly unjustified. The Government is expending much energy to establish that the Army action was justified. But each revelation that the Government puts out to justify the action—the extensive fortifications, the extensive arsenal, the long list of murders, the allusions to foreign links—in fact reinforces the questions, 'What were you doing all this while? Why did you allow things to go this far?' The delay thus was criminal. But it was not fortuitous. And in that are the lessons for the future.

The delay was occasioned by the fact that we today have no government. We have just one preoccupied lady. Since the Cabinet, the bureaucracy have been reduced to servitors there has been no one to urge a point on her with any semblance of authority, to speak the unvarnished truth to her, to shake her out of her reveries, her preoccupations. And, till she was pushed to the wall by the terrorists, her pre-occupations have been ASIAD, NAM, CHOGM, the Nobel Peace Prize.

In the absence of a government, everything has turned on the psychology and the perceived interests of one person. And in this, two factors have directly contributed to the delay and hence to all the consequences of that delay—the blood spilt, the animus spread among the people.

As in the past, instead of doing her duty, Mrs Gandhi waited for circumstances to first absolve her of the onus of discharging her responsibility. By the end everyone was clamouring for action and so she could not be blamed for at last agreeing to it. But what a terrible price *others* have to pay for her to feel that the situation has ripened sufficiently for her to be clear of any potential blame.

Action was delayed because for long the situation fitted in quite neatly with Mrs Gandhi's politics: foment chaos, foment insecurity, or at least let them fester, and then present *herself* as the only available saviour. For this too, others—the 400-odd innocent men, women and children gunned down by the terrorists, the communities that now have poison between them—must pay the price.

The third portent for the future is that, as the toll mounted, as the Government dithered, as it gave its 'ultimatum' one day only to deny it the next, as it sent its letters—one of them by registered post—to the SGPC to hand over the criminals, the country could do absolutely nothing to goad the rulers to do their duty. The rulers are ineffective and illegitimate, of course, but they are also out of reach.

So, the crucial question is: Will this episode bring us nearer to or take us farther from having a responsive and accountable government? If the people once again attribute to Mrs Gandhi what clearly has been accomplished by the Army, if they again convince themselves that she is the only available saviour—as well they might, given the spectacle that the Opposition continues to make of itself—they will pay a heavy price. Mrs Gandhi's strategies will remain what they have been. But, as the Punjab episode shows, they will be even more destructive than in the past.

For one thing, given the conditions to which the State machinery has now been reduced, such strategies will more and more often get out of hand, as they so vividly did in the Punjab. For another, there is now a qualitative difference. In the first decade of her rule Mrs Gandhi strengthened her position by undermining one institution of the State after another. That politics has run its course. Now, she depends on setting one community against another: Assamese against Bengalis in Assam, Hindus against Muslims in Jammu and Kashmir, Sikhs against Hindus in the Punjab. And in the Punjab we have had a glimpse of what such politics has in store for us.

June 1984, written just after 'Operation Bluestar'.

CHAPTER V

'Them' versus 'Us'

OVER THE LAST two years sequences that leave hundreds, indeed thousands, killed have become a quarterly phenomenon. Assam, Punjab, Hyderabad, Bhiwandi, Bombay, Delhi have followed each other every few months. Several facts about them point to the future:

1. The cause that sparks the carnage has been different in each case, the perpetrators have been different, the nature of the violence has been different; one feature however has been identical: the State, when it was most needed, disappeared, or joined the mob.
2. Although one carnage has followed the other, although each has left so many dead, none of them has shaken the country as a whole. Assam seemed so remote from the south, Bhiwandi and Bombay left Delhi looking the other way, Punjab continued to be a matter for academic discussion in Madras and Bangalore, the latest carnage in Delhi has left Bombay preoccupied with the usual business of the day. As a consequence, none of these calamities has touched off a nationwide outrage at the stage of governance.
3. Even at the epicentre of the trouble, the concern and anger and horror and revulsion have died down swiftly, so that even at that place, no structures, no processes have changed; but some attitudes have, in

that people have become that much more accustomed to violence, to bestiality.

4. In no case was anyone brought to book. Those in the State machinery whose negligence, obstinacy, connivance or instigation had precipitated the carnage continued to prosper, going on, as in the case of Assam, to ambassadorships and advisorships elsewhere. Those outside the apparatus who, in the exceptional case, were hauled up for what they had wrought, turned out, as in Bombay and Delhi, to have patrons and clients enough in the State machinery to elude justice.

5. In fact, each event shows that the State has become incapable of making even the symbolic gesture: for instance, in none of these gruesome tragedies was even a Commission of Inquiry appointed to look into the matter; similarly, in none of these did the State spare effort or even attention to rehabilitate the survivors— some *proforma* ‘compensations’ were announced and everyone reverted to the *status quo ante*.

In cases like Bombay, Bhiwandi and Delhi, it is apparent that the carnage became possible because of the bonds between politicians, criminals and the police. That two to three thousand could be mobilised in Delhi from *jhuggies* and *jhonpries* and from nearby villages to burn and kill testifies to the bonds. The event in turn strengthens the bonds: the politicians who mobilised the criminals and, through them, the lumpen, need the latter now to ensure that no one testifies to the *bandobast*, to the instigation; the latter now need the politician and policeman to ensure that no case or inquiry is pursued, to ensure that they can keep their recompense, the loot.

The result is predictable. Thus, for instance, Delhi after this latest round has two to three thousand who have looted and burnt houses and shops, who have hacked limbs, who have roasted men, women and children alive. And it has thousands who watched all this happen before their eyes and did nothing. The former are to this extent emboldened and brutalised for the next round, the latter are coarsened and left that much more callous to accept such bestiality as being just ‘one of those things that happen’. Indeed, the latter cannot now but be in even greater awe than before of the *dadas* in their localities. Have the *gundas* not demonstrated yet again—and now on such a scale and so openly—that they can kill whom they want, that they can loot and burn at their will and no one dare touch them?

Pointers in Delhi

IN ASSAM the obstinate refusal to attend to a problem, to heed the people, and the perverse determination to install a government of one's party resulted in the violence. In Punjab the cynical use of one man bred a Frankenstein, and cynical short-sighted calculations plus dithering resulted in a situation in which a bludgeon had to be wielded. Delhi marks a further qualitative change. Fact after fact points to sponsorship, the sequence itself precludes spontaneity. A good bit of evidence has been gathered by individuals and organisations. Some of it is before the courts. It is necessary to recall only the bare outlines of the sequence.

1. Mrs Gandhi was assassinated around 9.30 a.m. on 31 October.
2. Around 5.30 that evening, violence—in the form of vehicles being stopped, Sikhs being pulled out and beaten—started on a small scale in one compact area near the All India Institute of Medical Sciences (AIIMS).
3. By 7 to 8 p.m. this had escalated into arson, but it was still confined to four or five localities in South Delhi, and it was still on a small scale.
4. Even though by now the administration had 8 to 10 hours to deploy forces, and even though the violence had started from around the very place—the AIIMS—where all the decision makers had been present, in none of these localities did the police obstruct those indulging in violence and arson.
5. An internal security plan exists that prescribes in detail what each unit of the civil administration, police, and the army is to do in a contingency. Under it, each unit of the army, for example, knows the precise locality to which it must immediately proceed upon receiving a code word, the vehicle it must use for the purpose, the arms, ammunition and supplies that it must carry, etc. In accordance with this plan, troops were put on alert on the afternoon of 31 October itself. That night the news agencies reported that troops equipped with automatic weapons were being kept in readiness, that 'several hundred troops in three-tonne army trucks and jeeps fitted with 106 mm recoilless rifles were seen on the Ring Road and in the South Delhi colonies of R.K. Puram and Moti Bagh.
6. The violence abated after 10 to 11 p.m. on 31 October, the night passed more or less peacefully.

7. By the morning of 1 November, the authorities had had 24 hours to deploy the requisite forces; instead, the personnel patrolling the city on the morning of 1 November seemed to be even fewer than on the previous afternoon and evening.

8. Between 10 and 11.30 a.m. on November 1, arson and violence began almost simultaneously in 20-odd localities in Delhi—it began, that is, after the authorities had had over 24 hours to deploy the requisite forces, to put the alert plan into effect, to impose curfew, to round up potential trouble makers, to issue shoot-at-sight orders.

9. The violence was preceded by distribution of liquor in large quantities, by rumours, and, most important, by young men in jeeps, scooters, motorcycles and, in some cases, cars, visiting the localities to pin-point the houses and shops of Sikhs; they identified these from neighbours, in many reported cases by threatening them that violent consequences would follow the neighbours' refusal to help. In some cases, it is reported that these persons even had electoral lists with the help of which they pin-pointed the residences of Sikhs.

10. In most localities, the violence and arson were the work primarily of outsiders; these had been brought to the localities, in several instances over long distances.

11. While the core of the mobs consisted primarily of villagers and residents of *jhuggies* and *jhonpris*, they were led by *gundas* of the locality and by local leaders of the Congress-I; the survivors as well as neighbours have given detailed descriptions as well as names of those who led the mobs. The outsiders—most of them illiterate, most of them under the influence of liquor—just could not have pin-pointed the houses and shops of Sikhs but for the 'homework' that had preceded the violence.

12. There is scarcely a report of the police having done anything to deter the arsonists and killers; in fact, a number of eyewitnesses recall the policemen instigating the mobs and bystanders to do a thorough job; many have named individual policemen as having themselves looted and killed.

13. The core of the mobs came equipped with *lathis*, knives, iron rods as well as with incendiary materials like petrol and kerosene; in some cases the latter were commandeered locally, from the local depot, the nearby vehicle, etc.

14. The mobs were not in frenzy, they displayed no passionate anger;

they went about their diabolic work at an unhurried pace; in almost all localities the violence and arson were committed sequentially, i.e. it was not that an overpoweringly large mob descended suddenly on the entire colony, but that a group, often as small as fifty, went from one house or shop to the next, from one *gali*, one block to the next in sequence. This testifies to the time the authorities had to stop the carnage; it testifies also to how atomised we are: the neighbours, even as they gave shelter to individuals, could not put up organised resistance; it also explains how the lucky escaped with their lives.

15. In areas like Trilokpuri that were affected the most, the killing and arson commenced late on the afternoon of 1 November, i.e. after the authorities had about *thirty hours* to deploy the forces—and continued till late into the evening of 3 November; that is, it went on unhindered for about *forty-eight hours*. During this period, the groups that were killing and burning returned to the colonies again and again till little was left to burn, till few were left to kill.

16. The core of the groups ranged from about 50 to about 200 men. Senior police officials state that 25 armed personnel are sufficient to handle a mob of 200 to 300, that the Delhi Police have considerable experience in containing mobs, that, in fact, it has a record of putting down riots and arson swiftly. As just 25 to 30 groups each with a core of 50 to 200 were in operation, two to three thousand well deployed armed personnel could have swiftly contained the violence. The Delhi Police has a strength of 33,000. Even if one excludes those on regular and medical leave, on guard and escort duty, the traffic contingent, those deputed to the Special Branch, the Foreign Residents' Registration Office, etc. (many of whom could in fact have been recalled in the emergency, but even if all these categories are excluded wholesale) about *thirteen to fifteen thousand* men were available for deployment. Moreover, as noted earlier, between Mrs Gandhi's assassination and the commencement of mass killings on the afternoon of 1 November, the Government had about 30 hours in which to supplement these with reinforcements from the CRPF, the BSF and the army. About 5,000 combat troops in readiness were waiting for orders in the Delhi Cantonment itself. In cantonments within 2 to 4 hours of Delhi, i.e. in Meerut, Hissar and Alwar—there were another 35,000. They also had been put on alert since the forenoon of 31 October.

17. Central, North and South Delhi were formally placed under cur-

few from 6 p.m. on 1 November; by 9 p.m. the curfew was formally extended to cover all of Delhi, excluding New Delhi. In fact, the curfew was enforced only from about 8 p.m. on 3 November; i.e. though announced, it was not enforced for about 48 hours.

18. Nor does there seem to have been any insuperable difficulty in enforcing the curfew; thus, when Rajiv Gandhi was expected to visit points in East Delhi late in the evening of 2 November, the curfew was swiftly and effectively enforced for those few hours along the route.

19. Similarly, on the evening of 1 November it was announced that the police and army had been given shoot-at-sight orders; in fact, these were sent out only around 3.30 p.m. on 3 November.

20. In contrast to all this, the entire state of Punjab was, as it should have been, effectively secured between the time Mrs Gandhi was shot and the time that her death was announced over the All India Radio, i.e. between 9.30 a.m. and 6 p.m. on 31 October itself.

21. Information about the arson and killing was available to all levels in the police, the Delhi administration, the Union Home Ministry, the Prime Minister's Secretariat, the Cabinet Secretariat, the new Prime Minister's close associates, and Rashtrapati Bhavan. Evidence to this effect is available from survivors, pressmen, leaders of political parties, eyewitnesses of the violence, all of whom spoke directly to officials and others at various levels in these establishments. Evidence is also available from those who monitored police transmissions that police personnel in the field and on patrol regularly reported the arson and killings to their superiors at Police Headquarters. In any event, the violence and arson were taking place in broad daylight, over large tracts of the city, columns of smoke could be seen from miles away. No one could have missed knowing what was going on.

22. From beginning to end, the Government tried to talk away what was happening. On 1 November, M.M.K. Wali, the then Home Secretary, asserted that the number of persons killed in the entire *country* was just *ten*—the number dead in Delhi being only *five*, one of these having died in police firing, three in an exchange of fire between two groups, and one having been stabbed. That was all. And that is how precise his information was. He expressed his confidence that the situation would be brought under control by the next evening. On 2 November, P.G. Gavai, the then Lieutenant Governor of Delhi, affirmed that at that time there was no need to set up camps to which people who were feeling insecure could move. The presence of troops, he was

M.M.K. Wali, as is customary, asserted that the press was giving exaggerated accounts of the death toll and the events.

Quite apart from the detailed eyewitness accounts of the survivors as well as neighbours, these facts preclude spontaneity. Instead they suggest a sequence: that late on the evening of 31 October a decision was taken to 'teach the Sikhs a lesson'; that through the *dadas* and criminals, with whom some politicians have a regular liaison, groups were contacted that night; that the targets were identified and the groups mobilised on the morning of 1 November; and that they were given a free hand till after the funeral was over on the evening of 3 November.

The conduct of the leaders of Congress-I, and of the Government since the carnage, points in the same direction. Thus, for instance,

1. On 3 November, the Police Commissioner stated that over a thousand had been arrested during the day on charges of rioting, arson and murder; they were swiftly released; nothing has been heard since of a single case against any one of them having been pursued.

2. On 6 November, it was put out that Rajiv Gandhi had ordered an inquiry into the role of Congress-I legislators in the violence; on 10 November, General Secretaries confirmed that they had heard nothing about the inquiry having been instituted; in fact, no inquiry was instituted.

3. On 10 November, the Additional Commissioner of Police of the worst affected area—Trilokpuri—announced that 22 identified ring-leaders responsible for the carnage in the area had been arrested; they too were promptly released; nothing has been heard since of any case having been pursued against any one of them.

4. Police officials and pressmen who were present have reported that MPs and Corporators of the Congress-I intervened to have those arrested by the police released. (Even though information to this effect came from policemen and pressmen who were themselves present, the news reports were denied by the Congress-I MPs, etc.)

5. The police had a good bit of information about the villages and the *jhuggi-jhonpuri* colonies from which the marauders had been mobilised. It was the common talk among police officials that simultaneous raids of those identified colonies and villages would have been an excellent beginning: the arrest and interrogation of those caught with looted property would have opened the door to procure information

reported to have said, would make that unnecessary. On 5 November, about the genesis, pattern, instigation, organisation of violence. Of course, the raids were not ordered.

6. Instead of the areas being raided and the culprits being caught so that they could point to the truth, they were invited to hand back the looted property. Was it more important to recover a few TVs and video sets or to apprehend the culprits and through them to get at those who had directed or instigated them?

7. No effort has been made by the police to collect the hundreds of photographs and movie-films that were taken, photographs and films that might have helped the police of a locality spot the notorious characters of that area at the scene of violence.

8. In the words of the Commissions of Inquiry Act, looting, arson, murder constitute 'a definite matter', there is nothing vague about them; they are also, and manifestly so, 'a matter of public importance': over a thousand are reported to have lost their lives; over 50,000 are said to have been rendered homeless; the facts suggest sponsorship; they point to negligence and worse of the State apparatus; they point to the nexus between criminals, politicians and the police; relations between two communities have been embittered. There can scarcely be a more appropriate instance for appointing a Commission of Inquiry. Citizens from all walks of life have urged the Government to do so. The Government has done nothing of the sort.

9. Instead, from 10 November, the Government—anxious to proclaim that 'normalcy has been restored'—with unimaginable callousness, started to forcibly close the camps, to forcibly send the refugees back to the colonies from which they had fled, in which they had seen their relatives being hacked and burnt just a week earlier, in which their houses were nothing now but burnt-out empty shells, in which the very *gundas* and policemen they had seen loot, burn and kill roamed freely. Their heart-rending pleas that they should not be thrown back to the mercies of these persons, that they should not be sent back till their colonies had been made secure, till their houses had been made habitable, proved of no avail. They were given Rs 50 apiece plus some dry rations (they had no utensils in which to cook these) and herded into buses. Where on their return they huddled together in a park, as in Sultanpuri—one of the terribly affected areas—they were forcibly dispersed.

The obsession at the top to push the matter out of sight, to dem-

onstrate that everything has 'returned to normal', the anxiety further down that no one higher up should suspect them of harbouring concern for persons who had merely been 'taught a lesson'—and the cost of all this is to be borne by innocent widows and children, by a family, 17 of whose 23 members have been burnt alive, by the woman who still keeps a finger, all that is left of one dear to her, a finger that was hacked before her eyes to get a ring.

Is this 'normal' conduct for a government? If so, even the gods cannot save us. Or is it the conduct of a party and a government that has everything to hide?

The Politics of Teaching Lessons

'TRUE, WHAT happened was too much. But the Sikhs *had* to be taught a lesson.'

As if, to teach them a lesson, the hand were to wrench out the eyes.

The very Hindus who six months ago were saying, 'But look at the Granth Sahib—that itself shows that the Sikhs and Hindus are one, every second verse in it invokes Ram and Hari,' those very Hindus are today saying, 'We have taught *them* a lesson.'

Have they not then come to accept the two-nation theory? Does their new language not itself proclaim the triumph of Bhindranwale?

Can parts of a country stay together on the basis of reciprocal terror? Can we survive as one nation on the premise that the Hindus in Punjab shall constitute hostages to the Sikhs and the Sikhs in the rest of India will constitute hostages to the Hindus? What will you do in the Armoured Corps? Will the Hindu officer and his Sikh *jawans* manning a tank on the border also maintain peace through a balance of mutual terror? Instead, will you exclude the Sikhs from the armed forces altogether? If you do so, how will you keep an entire community down except by out-and-out Army rule?

But it is not enough to condemn this reaction, this appropriation of the violence. We must understand its roots, the manner of its spread, and where teaching each other 'lessons' will lead us.

Much of the violence that followed Mrs Gandhi's assassination seems to have been sponsored. But clearly, sponsorship was not the only factor at work. Even as many neighbours sheltered Sikhs, many just watched. Similarly, the violence that erupted in the trains, for instance, could not have been all sponsored. The inaction of policemen

too must, in part, have resulted from a latent anger against the Sikhs that they shared with the non-Sikh population in general. The retrospective appropriation of the violence has, in part, to do with assuaging guilt—for to the extent that one can persuade oneself that ‘the Sikhs *had* to be taught a lesson’, to that extent the guilt and horror are assuaged—but it also testifies to the cumulative anger at the killings in Punjab, to the fact that to a large number, Mrs Gandhi’s assassination was the last straw, that as it was retribution for storming the Golden Temple it seemed that she had been killed for something that the Hindus felt had become necessary and just and inevitable.

Nothing at all justifies the killing of innocents, and, as we shall see in a moment, teaching each other ‘lessons’ is nothing but mutual suicide, but it is important to see why entire communities are seized by the fever of revenge. They are so seized because of the continuing inaction of the State. As avenue after avenue of reform is closed, communities are put in mind of revenge. When the State fails to provide security and justice, many in Bhagalpur come out to demonstrate that the blindings are justified. When the State obstinately refuses to heed the peaceful entreaties of the people of Assam, the people are driven to conclude, ‘No one will listen to us, we must save ourselves.’ When the State does nothing to stop the killings in Punjab for three years, when these are followed by an assassination—even if this be of the person who was herself most responsible for the inaction—thousands conclude, ‘But they *had* to be taught a lesson.’ If for years the State does not exercise the power that it has under the laws to prevent the misuse of the Gurdwaras, if for years it dithers, announcing in one breath that the Golden Temple has become an arsenal and in the next that it will not enter it, the Gurdwaras themselves become the object of the mob: by burning and desecrating them, the mob establishes for itself that there shall be nothing inviolable about them.

I repeat thrice over that none of this justifies in the slightest what was done, that this way of going about affairs of State is suicide. But unless we look this fact in the face we shall not see the remedy. The breakdown of the State, its manipulation and cynical use, that is what has set us at each other’s throats. Restoring efficiency, probity, norms, accountability to the State is thus the *sine qua non* of reform. But there is more. The arson and killing as well as the subsequent appropriation of the violence both reveal it.

The terrorists kill. The Sikhs of Punjab as such do not kill the Hin-

us as such. Only the terrorists kill. And they kill the innocent. The revenge in Delhi and elsewhere is wrought, again, not on the terrorists, but on the innocents. They have nothing to do with the terrorists. The Hindus in Delhi must know this, and yet they say '*The Sikhs* had to be taught a lesson.'

There is thus a fusion. The others become an undifferentiated monolith. They become truly *the other*. Next, they are all endowed with evil, they are all fused into one undifferentiated, dangerous being. The normal concern and compassion for another human being is less and less of a restraint. Each distances himself from the victim, the victim becomes an abstraction, not another human being like me, but a category, 'a Hindu', 'a Sikh', and a category of dangerous and evil things. Restraints loosened, fears heightened, the people become a mob—the mob, as Cannetti says, a pack. Killing the innocent neighbour becomes getting at the terrorist.

Perceptions fracture—what is 'hurt' to some becomes 'triumph' to others. Each comes to view the hurt in isolation, he sees only the wrongs done by the other. He can no longer see his share in bringing things to this pass.

Each comes to view a 'triumph' as the final event—'at last *we* have taught *them* a lesson they won't forget'—when, in fact, it is but the most recent link in a chain to perdition. Those who come vicariously to identify with Bhindranwale see his executions, the killing and driving out of cowardly Hindus, as the end of the matter. The Army acts, the Hindus view *that* as the end of the matter. Mrs Gandhi is killed, some Sikhs see *that* as the end. The killings and arson follow in Delhi. The Hindus view *this* as the end—'a lesson has been taught'. And if there is retaliation in the Punjab?

Evidence—both *pro* and *contra*—only serves to confirm the prejudice. If there is now no retaliation in Punjab, the 'lessons' school will say, 'See, we told you. *We have* taught them a lesson.' If there is, they will say, 'Didn't we tell you? It is their nature. They will go on killing us Hindus.'

When communities, though consisting of millions, are thus rent asunder, their further relations come to depend on a hundred or a thousand on either side. If a few terrorists kill in Punjab, the Hindus feel that 'the Sikhs' are killing them. If a few hundred or thousand in Delhi kill, the Sikhs feel that the entire Hindu community is out to wipe them out. And on each side the few hundred can be—and there-

fore are—manipulated by half a dozen, whose motives have nothing at all to do with—in this case—the tenets of the religions along whose external symbols the peoples are fractured.

There are thus two aspects of the process: progressive differentiation between ‘them’ and ‘us’, and the growing belief in ‘might’—beginning with, ‘might alone matters’, it ends with ‘might is right’.

These two aspects ensure that the process, even if it succeeds in cowing down, in driving out, in eliminating ‘them’, the weak, the few—the Jews in Germany, the Hindus in Punjab, the Sikhs in the rest of India—swiftly turns on the members of the group itself, on ‘us’. Assume that Bhindranwale had succeeded in driving out or eliminating the Hindus in Punjab. The differentiation would have gone on, might would even more emphatically have become right, the process would have turned on minorities among the Sikhs themselves—the Nirankaris today, the Mazhabi Sikhs tomorrow, the non-Jat Sikhs the day after. Assume on the other hand a society of the Hindus that is able to ‘teach a lesson’ to the Muslims today, to the Sikhs tomorrow. The third day it will be ‘teaching a lesson’ to the Harijans, the fourth some ‘Aryans’ will be teaching it to the ‘Dravidians’, and thence to the Arya Samajis, the Sanatanis.... For each of these is a minority in relation to the whole, each is a deviant in the eyes of the others.

This new, narrowing attitude of exclusion is a complete reversal of everything that Swami Vivekananda, Aurobindo, Gandhiji—the very teachers with whom the renaissance of Hinduism is associated—taught and worked for. They were acutely aware of the narrow, sectarian divisions in each of our religions, of the potential that these had of growing and exploding, of the danger of ‘fundamentalism’—that is, of demagogues and charlatans seizing the people. Therefore they distilled, from Hinduism even more than from other religions, the *inclusive*, the *universal*, the *universalising* elements, and made these their message. A turning away from these inclusive, universal, universalising elements—reflected as it is in regarding one group after another as ‘them’, in setting out to teach others ‘lessons’—will splinter our society and it will impose a social and political tyranny on whatever it is that remains.

As Hannah Arendt and others have pointed out, such attitudes arise out of a failure to instil political idealism and nationalism among the people. They themselves arise in the garb of idealism and nationalism. Race thinking in Germany, which preceded racism by decades,

arose as a device for unifying the people, as a device for separating the true from the false, the strong from the weak, the open and trustworthy from the secretive, clannish and weak. But they are profoundly *anti-national*. They start on the premise that something less than the whole, something smaller than the whole, is the nation.

Moreover, the attitudes divert the people from what needs to be done, they foreclose improvement and growth. They deprive the people of introspection by making introspection unnecessary. For every problem *the other* becomes the cause—we project on to *the other* what we most hate in ourselves; the evil, the deficiencies, we convince ourselves, are in *them*, not in *us*, and, if in *us*, they are there because of *them*—and so the further distancing from, the further suppression of *the other* becomes the necessary and sufficient cure for everything. The country is endangered? Remove the Muslims (and now the Sikhs?) from sensitive posts. That exempts us from thinking about the Jai Chands and the Omin Chands among the Hindus. Corruption is eating into our vitals? The cure is the same! An ostensibly educated and thoughtful man came to me after the riots and said, 'But haven't you noticed that as the Sikhs have risen and prospered and spread, corruption has grown? Wherever they go, they spread it.'

Nor can the process stop short of a tyrannical militarisation. As it is, we are so far gone towards military rule. The people do not look to the State any longer to provide them development or even justice. A few more Assams, Bhiwandis, Punjabs, Delhis and the people will conclude that this form of governance cannot provide them even physical security. There will then be a popular urge for handing things over to the Army. On the other side, the daily use of the Army for one thing after another convinces the Army that things indeed cannot run without it. Not just that, the fact that the Army today has to undertake all these tasks but under a vacillating, indecisive civilian leadership leaves it chafing and bitter. 'They can't manage on their own, they call us in but because of *their* dithering *we* have to take the blame for not being able to handle the task—the casualties in the Golden Temple, the fact that the riots in Delhi were not controlled for two days after we were ostensibly called....' A random event—perhaps a humiliation at the borders—can trigger the avalanche: 'These god-damned politicians have got us into this mess....'

So close are we to the precipice. And if to all this is added the new ideology of teaching 'lessons' to entire segments of the population,

there is just no way in which we can survive as a free and open society and, therefore, eventually as a society itself.

What is to be Done?

FIRST, WE MUST cauterise the violence. To the extent that Punjab, Bhiwandi, Bombay, Delhi are communal, we should educate the people about what they portend. To the extent that the violence is *not* communal, to the extent that it is the work of a handful, as in the Punjab, to the extent that it reflects not so much the attitudes of the communities themselves as the criminalisation of politics (as in Bhiwandi and Bombay), to the extent that it is sponsored (as in Delhi) we should document the facts and disseminate them to every nook and corner of our country. Documentation and dissemination of this kind will make it that much more difficult for *agents provocateur* to use each bout as a trigger for the next.

Second, there is the whole question of reforming the State, of restoring to it norms, probity, accountability. Till our people understand that what we are witnessing today is a direct result of the perversion of the State, of the politics of the last decade—be it the politics of the Indira Gandhis, of the Akalis, the Opposition, or the Bhindranwales—we will not even make a beginning towards salvaging our affairs. This is not the place to list the many things that need to be done for this purpose. Two examples from the present context will suffice.

All groups—e.g. the religious minorities—must see that their security lies not in this leader or that, not in wresting this concession or that from opportunist politicians, but in the proper functioning of the institutions of the State. For decades leaders have created conditions of insecurity and then presented themselves as the only available saviours. Mrs Gandhi was particularly skilful at projecting such images. But the test surely must be what such leaders are doing, in the meanwhile, to the institutions of the State. If they and their politics are undermining these institutions, then by the end *all*—minorities most of all—will be left as they now are, defenceless.

And how superficial have been the indices by which one leader has been taken to be 'secular' and the other branded as 'communal'? The chief of these has been that the former was the more energetic in branding others communal. Plus the well-rehearsed theatre—that he would speak a little Urdu, that he would send out greetings on the fes-

tivals. Did such leaders hesitate to use religious imagery when it suited them? Were they any less energetic in fanning and exploiting religious sentiment, in forging voting blocks on the basis of religion and caste? Who was banking on the 'Hindu backlash' in the end? Is it wise then to go by such superficial indices and ignore what such leaders are doing in the meanwhile to the State, its mores, its institutions?

Similarly, the singular guarantee for the rights and privileges of all groups—in particular, of the religious minorities—is that the rights and privileges of the average, individual citizen be fully enforced. But over the last few decades, group after group—the religious minorities, the Dalits, the 'sons of the soil' in each region, the 'backward castes'—have come to focus more and more on the rights and privileges they can secure, or, in some cases, grab, *as members of a group*, rather than the rights and privileges that should be available to every citizen *qua* citizen. Instead of working for a better education system, for full employment for all, we work for reservations for our caste. Instead of ensuring that all banks work well, we acclaim the cynical opportunist who sets up a special 'Bank for Minorities'.

Such a pursuit is quadruply harmful. It diminishes the resources that are available for the fight for ensuring the rights and privileges of every citizen, and as the institutions and policies needed for safeguarding these are eroded, eventually no dykes are left to safeguard the rights and privileges of the minorities and other groups too. Second, the grabbing-by-groups means that it is enough for the leaders, for the State itself to make the gesture merely to the group. It is nobody's concern that the benefits do not reach the weak or even the average in the group—indeed, that they are monopolised by, and that they stop at, the privileged in the group.

The political leaders manipulate the entire group through these privileged few, by channelling favours to and through them, that is, by corrupting them. Thus, even as some in the group or community 'use' these group *netas* by securing favours through them, the group *netas* acquire the reputation within the group of being toadies. They become more and more distant from the members of their own group. As their hold loosens, they redouble their efforts to whip up the emotions of the group—this serves to reaffirm their *bona fides* with the group as well as to remind the State and its leaders that these *netas* had better be kept in good humour—and to ensure that no other leaders emerge in the group. The sequence impoverishes the group, the minority, the community, even as it distances it from the whole.

Third, efficiency suffers and the poorer functioning of institutions and enterprises affects the group as much as the general citizenry. Finally, the entire process makes the group the object of the hostility of the rest.

On the negative side, I injure rather than help my community or group if I believe or act as if everyone else must adhere to the laws of a secular State but it is all right for my group to cut corners. The Hindu who tomorrow holds that it is none of the State's business if the premises or funds of Nathdwara or Tirupati temples are misused will end up harming his community as much as the Sikh who did not move in time to ensure that the SGPC adhered to the All India Gurdwaras' Act.

All groups—religious minorities as much as caste and other groups—must therefore see that their advancement, interests and security are best ensured, not by making deals with this leader or that, but by strengthening the institutions of the State, by shifting the focus from our rights and due as members of the group to our rights and due as average citizens, and by ensuring that the laws of a secular State are enforced equally for all.

But as the preceding narrative shows, we have to go beyond reforming the State. Our perceptions themselves need to be set right. Again, just a few examples will have to suffice.

We must learn to separate the genuinely religious from that which uses religion to demonstrate power. So many of our communal riots are occasioned by processions, both of Hindus and Muslims. The garish and loud processions are a part of neither religion. Do bullies from both sides not use them to demonstrate their muscle? Should we not deal with the processions accordingly? Is our god deaf that we have to blare away from loudspeakers to get his ear? Is this prayer or is it exhibitionism? Is this religion or is it over-awing the other? Or take the terrorist in Punjab and the marauder in Delhi. Has either been civilised by his religion? Does the action of either derive from it? Can the terrorist's act be derived from Guru Nanak's compassion any more than the killer's from Hinduism's much vaunted *vasudhaiv-kutumbakam*?

Consider the mutual perceptions of communities. The Hindus complain, 'We Hindus are always quarrelling among ourselves—Arya Samajis versus Sanatanis, Brahmins versus Rajputs. But look at the Muslims—they are one. That is why we are kicked around.' And the

Muslims complain, 'We are always fighting each other—Sunnis versus Shias—and the Muslim in Madras can't even understand the Muslim in Lucknow. But look at the Hindus, *they* are one. That is why we have lost everything.' Perceptions of this kind are what pre-dispose us towards that fatal fusion at the moment of anger which we have noticed earlier. Shouldn't we teach ourselves, and especially our children, more about each other?

Indeed, must we not shun every prejudice that attributes to any aggregate a virtue or an evil as its characteristic? Are we not reminded every three months that no aggregate of humans is inherently superior or inferior to another? To cite a non-religious aggregate, do not the killings in Delhi—mostly of the poor by the poor—remind us, as Russell wrote long ago, that the supposedly superior virtues of the oppressed too are a myth?

Just as we teach ourselves to decompose the aggregates, to view one another and to deal with one another as individuals, as specific human beings, just as we fight every ideology that attributes an inherent vice or virtue to any aggregate, we must fight every concept of 'nation' or 'State' or 'society' that excludes entire aggregates, or relegates them to an inferior position. Relegations and exclusions of this kind are the surest way to social and political tyranny.

Beyond the State, beyond even these perceptions, we need to transform the mythologies themselves. Remember what the assassin told his captors after killing Mrs Gandhi? 'You can do what you like,' he said, 'now I have become a *shahid*.' In this version of martyrology, a martyr is one who kills another and is killed as a result. But there is the other conception—that of the Buddha, of Gandhi—that a martyr is not the one who suffers after inflicting pain on others but the one who takes on the pain of others. Do we need the *shahid* or the *wali*, the audacious martyr or the wise teacher?

All this requires patient, persevering and detailed work. As it is so little in fashion, I stress specially the last—the working out of details. It is not enough to be outraged at the next religious-procession-that-turns-into-communal-riot. We must work out the sensible routes, the mandatory regulations for processions in each city. It is not enough to regret that the evolution of Muslim personal law stopped in 1947. We must catalogue and disseminate the reforms that have already been introduced in other Muslim countries—Turkey, Egypt, Indonesia; even Pakistan has a divorce law that safeguards the interests of

women better than the Indian Muslim personal law. It is not enough to lament the plight of Muslim women in the absence of a uniform civil code. We must formulate and disseminate such a code. It is not enough to bemoan the spread of communal propaganda. We must examine in detail pamphlet and handbill literature that is being distributed at Hindu *yatras* and fairs, at the Friday prayers, from the 'academies of Sikh culture and history' in Patiala and Amritsar. It is not enough to bewail the growing sentiment against reservations. We must actually establish, if such be the case, that they are not affecting efficiency, that the benefits are, in fact, percolating to all in the protected group, that the groups excluded by the reservations have not become the newly disadvantaged. Unless we do so, we in fact help the resentment grow, we let it turn to bitterness and then explode. It is not enough to bewail the feeling among many Hindus that the birth rate among Muslims is higher, that this has to do with polygamy and the deliberate non-adoption of contraception by the Muslims. We must establish empirically whether or not the birth-rate is indeed higher, whether this has to do with polygamy, indeed, establish what the incidence of polygamy among Muslims is in the first place. We must ascertain whether not planning families has to do with religion or with poverty, whether it has to do with cussedness or with the fact that there are few Muslims among the extension workers engaged in family planning education.

It is this detailed, patient and persevering work that is needed today. How different it would be from the current fashion by which our 'progressives' establish their progressiveness by reducing everything to the 'economic explanation', by which our 'secularists' establish their secularism by branding others as 'communal'! And how infinitely more helpful would be its consequences!

November, 1985

CHAPTER VI

The 'Accord'— in the Light of Secular Principles

‘**T**HE PROBLEM OF PUNJAB has been solved,’ says *The Times of India*. ‘The problem of Punjab...has at long last been solved,’ says the *Indian Express*.

The relief is understandable. For five years every event, every move in regard to Punjab seemed to compound the problem. That leaders of the Akalis and the Government have started meeting again, that a document has been jointly signed, that the *Dharamyudh* has been called off—these are steps back from the precipice.

The relief is greatest among the Sikhs. They were beginning to realise how powerful a reaction the violence and intransigence of the extremists was setting up. They were realising that the longer the violence persisted, the more every Sikh would become suspect. The more the real face of extremism became apparent, the more difficult it was becoming to find moral justifications for it. They were therefore in a psychological trap.

They wanted to break out of it, but could not as long as they could not proclaim victory.

From this point of view there is virtue even in the fact that in making the latest concessions the Government has—and that too for the

fourth time this year—done so in the face of an ultimatum. The Sikhs can proclaim victory and put the last year behind them. The extremists will find them that much less receptive.

The Accord will also get politics back to normal. The Akali leaders had all been portraying the Government as an alien, an enemy, as an untouchable. The severest charge that each had against the other was that of being an agent of the alien-enemy-Government, of being in secret liaison with it. Now the principal leader among them has made bold to hold discussions openly with the Government, and jointly sign a document with the Prime Minister. The internal debate among the Akalis will intensify and their ire, instead of focusing on the rest of the country, will focus on one another. Soon enough the factions will get busy fighting each other over who will get how many seats in the coming elections, over control of the SGPC.

These are substantial gains, and all who have worked to secure them deserve our gratitude. As the months pass, however, the adverse effects of four features of the Accord will come to dominate the outcome.

First, the very signing of the Accord lifts an out-and-out communal party to the status of an equal of the Government of India. Second, the Accord has not settled any one of the matters of principle that the Akali rhetoric of the last five years had thrown up. Third, the Akalis remain completely free to pursue in the next round what they have not acquired in this: their objectives transcend specific issues such as who gets Chandigarh or what happens to the river waters; quite the contrary—the goals they have proclaimed will end our existence as a secular and democratic country, indeed as a single country itself. The Accord has not secured from the Akalis any commitment on the implications of these objectives, nor on how far and by what means the Akali Dal will pursue them. Finally, by sending the Anandpur Sahib resolution to Justice Sarkaria, the Accord puts a matter of life and death dangerously in the hands of one man; instead of settling the issue, the Accord has thus planted a time-bomb.

It will not be long before these features begin to torment us. We should therefore examine the matters of principle that should have been settled, as well as what should be done now that the Accord has willy-nilly been signed.

The Principles at Stake

IN THE LIGHT of the terrible events of the past five years—the usurpation of shrines; the inflaming of religious passions for political ends; the induction of terrorism; the emergence of groups whose declared aim it is to break the country; the dithering of the Government for three long years; the glaring inability of the apparatus to handle the troubles, an inability caused, among other things, by the manner in which it was perverted and packed with political sympathisers as much by the Akalis as by the Congress; the assassination; the killings in November—in the light of all this as well as of the rhetoric of the Akalis, six principles have been at stake:

1. The unity and integrity of the country are paramount and it is the duty of all citizens and groups to help combat the assaults on them.
2. All—citizens, groups, the State—must pursue their aims by peaceful and constitutional means alone.
3. All citizens must have equal opportunities, and it is the State's duty to ensure that all are secure and at peace.
4. Religion and politics must be completely separated.
5. No one, no group has the right to pack or use the apparatus of the State for communal aggrandisement.
6. The State has the right and the duty to ensure that no place—whether religious or not—that no institution, whether religious or not—that no group, whether of religious functionaries or not—is used to harm the country or its citizens.

The Accord gives us a moment's respite in relation to the first. But beyond this it has done nothing at all to advance or even secure the principles.

'Peaceful and constitutional means?' The Constitution had been burnt. Assassins had been hailed. The Anandpur Sahib resolution had explicitly proclaimed that in pursuing its aims the Akali Dal shall use '*all possible means*'. Securing a commitment to principle (2) was thus imperative; nothing has been done.

'Separation of religion and politics?' Much of our troubles have arisen because of the operating principle of Akali politics—'Religion is for Politics, Politics is for Religion'. Cadres paid out of the hands of a religious body—the SGPC—double up for politics. All the principal

political functions continue to be held in religious premises. The head priests arbitrate political matters. The budget of a religious body—the SGPC—officially and explicitly provides funds for ‘training in arms’, instead of advancing the principle of separating religion from politics, the Accord has raised the status of an out-and-out communal party and, by committing the Government in effect to passing an All-India Gurdwaras Act, it binds the Government to create the conditions for a communal party to extend its political hegemony precisely by acquiring control over more religious shrines.

‘No group or party will pack, misuse or communalise the apparatus of governance?’ Instead of making so much as a beginning in the matter, the Accord has set the worst possible precedent. For the first time the Army too has been made the subject of a political deal. Those guilty of what is in the Army among the most nefarious of crimes are to be rehabilitated and given gainful employment. And quite obviously this is to be done at Government expense and initiative. If the responsibility was to be that of the Akali Dal, it did not need to obtain the Government’s concurrence on the matter through an Accord. Similarly, the clause about Army recruitment is ominous. The text is gratuitous—‘All citizens of the country have the right to enroll in the Army and merit will remain the criterion for selection.’ But it will soon be used to revive Bhindranwale’s charge that the Sikhs’ merit is being deliberately disregarded and that that is why the proportion of Sikhs in the Army is falling.

Indeed, blowing hot one day and cold the next itself disorients and debilitates the apparatus of governance. During 1983 and 1984, Bachan Singh, a DSP of the Punjab Police, his son, his daughter, his wife, two employees at his shop, and three gunmen guarding him were shot dead. And so were Sub-Inspector Parmanand and Head Constable Makhan Lal. The ‘crime’ of the three had been that they had, as ordered, interrogated Amrik Singh, the then General Secretary of the AISSF. Last year the Government was being ‘tough’—over four thousand were arrested and scores of intelligence and police officials were put to interrogating them. Today the Government is being ‘statesman-like’. The cases will not now be pursued with any vigour. Which intelligence or police official in his right mind will interrogate the ‘terrorist’ you arrest tomorrow?

And so on for each of the other matters of principle. The country had paid heavily for five years—in trauma, in distrust, in blood. The

departure from these principles had led to the troubles. They should have been secured and advanced for the future. But the Accord has not even addressed itself to any one of them.

An Operational Rule

THIS WILL COST us dear in the coming months. The Akali leaders have been bitterly divided, and have been trying to outshine one another in 'standing up for the Panth'. For the last five years they have been trying to keep up with the extremists too. And, like most other politicians in India, they have not had the acumen to see the consequences of their rhetoric, of the demands they make, of the means they adopt—going on with their *morchas* one day even as the shrines under their control have been usurped; burning the Constitution the next; demanding the third that the USSR Constitution be the model for India in that it gives every province the right to self-determination to the point of secession, without realising that Stalin honoured the right by killing off over 25 million, including everyone with the slightest trace of sub-nationalism.

As a result, competitive communalism, and unthinkingly competitive communalism at that, has been the norm. In such a situation what is conceded is swiftly forgotten. Their competitions and quarrels lead the leaders to immediately start agitating for what has *not* been conceded in this round.

It is wrong to make-believe that the more extreme can be kept at bay by propping up a moderate, that the moderate can be propped up by routing concessions through him. Once it adopts this device, the State is compelled to go on conceding something or the other every quarter—to sign an Accord with him today, to enable him to win the elections tomorrow, to condone what he does to the police and bureaucracy the day after. 'The people will desert him otherwise,' the argument always runs. But the followers of that leader are not blind: they will see that it is the fear of the more militant leaders that is inducing the Government to go on making concessions, and will therefore conclude that they owe the gains to the latter. They will keep the moderate around just so long as they keep receiving concessions and will discard him the moment these stop. In the meanwhile the State would have put itself in a position of endless blackmail.

The rule should be to nail down everyone—'moderates' as much as

others on matters of principle and never to concede to a moderate what you will deny to an extremist. If a demand is just, meet it irrespective of whether an extremist is asking for it or a moderate. And do so promptly, without letting it become an issue of acrimony. If it is not, turn it down with equal disregard for who is espousing it. It is only after the community or group—having weighed all the circumstances, having carefully thought out the likely reaction to different courses of action—opts for moderation, for integration, for constitutional methods, for secular and democratic goals, that moderate leaders can emerge. They must embody a genuine aspiration, a genuine choice. And the only moderate who will serve the community and the country in the end is the one who has the courage to speak and act on the truth from the very beginning, and through the darkest hour. If such a leader is not around, or, if around, he is spurned by the group, then all it means is that the group has not yet opted for moderation. More time must then be allowed to pass. By failing to secure commitments from Longowal and his associates on matters of principle, in part at least on the false premise that going soft on the moderates is the way to prop them up, the Government has left everyone once again to the mercy of competitive communalism.

What Should be Done Next?

IN ANY EVENT, the Accord has been signed. What should be done next?

First, the Government should consult political parties and other groups all over the country with the objective of devising ways by which the principles may be furthered, and norms as well as ways may be devised by which adherence to them—by central and state governments, by political parties and other groups—may be monitored and enforced. If the Central Government does not do so, a State Government like Karnataka should. If ruling parties don't, parties in the Opposition should take the necessary initiative. If political parties don't, non-political groups should.

Second, the commitment to devise an All-India Gurdwaras Act should be used to pass comprehensive legislation covering institutions and premises of all religions uniformly to ensure and explicitly affirm the following:

1. All institutions, funds, premises—religious as well as non-religious—engaged in or being put to public use are equally open to inspection by the State which has the right as well as the duty to prevent their misuse.
2. Where misuse is manifest the State has the right and duty to do as it has done, for instance, in cases such as the Nathdwara, Tirupati and Vishwanath temples, i.e. to intervene directly to ensure better management.
3. The provision of the Companies Act by which the senior executives of a Company are personally responsible for the crimes committed by the Company—fraud, illegal transactions in foreign exchange, etc.—should be extended to cover religious organisations, premises and endowments.

It is entirely possible that in the surcharged atmosphere of today these proposals will be viewed as anti-Sikh. But a moment's reflection will show that they alone are compatible with our being a secular State and, in view of what became of the Gurdwaras, that they will work in the interests of Sikhs as much as of others. This is so for at least three reasons.

First, it was precisely because such provisions and practices were not in force in the past that sacred places came to be misused. Many maintain that the Government in some respects instigated and in any case allowed the misuse. That is manifestly true. But whatever the reason, and whoever's the fault, they came to be misused with tragic consequences—tragic, most of all, for the millions of Sikhs who had nothing to do with the misuse and who were as helpless as anyone else to prevent it. Misuse fanned by governments will fall within the purview of the Act as much as misuse prompted by anyone else. Therefore, in the interest of the country, and in particular of the innocent Sikhs, every way must be explored for making sure that religious places are not usurped as they were in 1980-4.

Second, the ordinary Sikh in his private capacity will find himself as helpless tomorrow as he was yesterday should another band decide to usurp the Gurdwaras again. His efforts therefore need to be supplemented by the efforts of the only agency that can in fact stand up to such bands, and that is the State.

Third, given the way we are going, Gurdwaras are not the only shrines that can be put to collateral use. What if different caste

groups or the Hindus in general start putting *their* shrines to similar use? The average Hindu will be just as powerless to prevent a militant group from doing as it pleases with Hindu shrines as the average Sikh was in the case of the Golden Temple. If the State acts as it did in 1980-4—that is, if it looks the other way or actively encourages one of the groups—all of us—Hindus, Sikhs, everyone—will be in deep trouble. It will be overly sanguine for any group to proceed on the assumption that there is something inherent in Hindu temples which precludes their being usurped or put to collateral use. The second thing to do therefore is to pass comprehensive legislation of this sort covering *all* religions uniformly.

Third, as the principal demand for the past five years has been that the Anandpur Sahib resolution must be accepted, as each faction among the Akalis will continue to try and outdo the others in forcing the country to concede its assertions, the resolution must be subjected to the widest possible debate and scrutiny all over the country. As suggested above, to leave the resolution to just one man—be he as eminent as Justice Sarkaria—will be dangerous in the extreme.

The Anandpur Sahib Resolution

THE ANANDPUR SAHIB resolution was drafted by a 12-member Committee of Akali politicians, a Major-General and an advocate. The team was headed by Surjit Singh Barnala who later became a Minister in the Janata Government and who has figured prominently in the discussions leading to the Accord. The team laboured over the text in eleven sittings spread over nine months. The resolution was adopted by the Working Committee of the Dal at its meetings in Anandpur Sahib in October 1973. And it was eventually adopted in the form of twelve resolutions by the General House of the Akali Dal at its session held in Ludhiana in August 1977.

Some confusion has been created in the public mind by the self-serving assertion of some apologists that there are in fact three versions of the resolution. It is disingenuous to insist on the one hand that the resolution must be accepted *in toto* and on the other that there are three versions of it. In any event, the Akali Dal itself has officially authenticated one text as being the one that was passed at Anandpur Sahib. Printed as Annexure III of the Government's White Paper on

the Punjab agitation, it is preceded by a statement signed by Sant Harchand Singh Longowal in his capacity as President of the Akali Dal. In it he says, 'There has been much confusion and misunderstanding about the text of the resolution adopted by the Working Committee of the Akali Dal at Anandpur Sahib. The Shiromani Akali Dal has been consistently making efforts to clear the spirit and the content of the resolution. Now, an authentic English version is being issued for the benefit of non-Punjabi knowing countrymen.'

Three points have been urged on behalf of the resolution: that it is just a plea for greater powers being given to the states, that its demands can be accommodated within our Constitution, and that it contains the sorts of demands—higher prices for grain, reduction of unemployment and disparities, elimination of poverty, etc.—that always figure in election manifestos. The points have been urged repeatedly, and not just by Akali leaders. The Dal's assertions on the first two are repeated in the Accord. The Government, which at one stage had characterised their resolution as secessionist, now seems to have accepted the Akali assertions about it at face value in as much as, after reproducing the Akali assertions, the Accord says that '*In view of the above*' the resolution stands referred to Justice Sarkaria, etc. This, as we shall see, is dangerous make-believe.

The minor point about the resolution is that many of its specific demands have not been thought through.

For instance, the resolution demands 'complete nationalisation of the trade in foodgrains'. All foodgrains or only the principal cereals? All trade—i.e. wholesale as well as retail—or only wholesale? The resolution as it stands would imply retail *as well as* wholesale trade in *all* foodgrains. This was a catchy slogan in the early 1970s. The Central Government's adventure of 1973 in nationalising merely the wholesale trade and that too in just one foodgrain—wheat—ended in a fiasco.

Similarly, the resolution demands that 'all key industries should be brought under the public sector', that 'basic consumer industries should be immediately nationalised', that 'every industrial unit beyond worth one crore assets should be brought under the public sector'. Really? Given the country's experience with the public sector do we really believe that it can effectively handle 'all key industries', all 'basic consumer industries' as well as every industrial unit with assets over Rs. 1 crore? Or consider the following demand:

The Shiromani Akali Dal is of the firm opinion that all those persons males or females who have not been convicted of any criminal offence by a court of law should be at liberty to possess all types of small arms, like revolvers, guns, pistols, rifles, carbines, etc. without any licence, the only obligation being their registration.

Guns, rifles, carbines are 'small arms'? And what types of rifles? Including or excluding, say the Russian Kalashnikov that fires upto ten bullets a second and has a range of a kilometre? And what types of carbines? Including or excluding the kind that was used to assassinate Mrs Gandhi?

Nor does this seem to be a twelve-year-old matter. In an interview after his release Longowal held that the word *kirpan* should now be replaced by or taken to include modern arms as 'the times have changed'. Joginder Singh has of course expressed an even more far-reaching view of the matter. While affirming that the Sikhs use weapons only to protect the feeble and not to tyrannise anyone, he said recently that Guru Hargovind himself had piled arms in the Akal Takht to fight invaders and that arms like the sword, dagger, spear, gun and even cannon are 'our *pir*', i.e. our saints or savants.

There are instances after instances of this kind. The demand immediately after the one about 'small arms' is that the sale of liquor and other intoxicants be banned and that consumption of intoxicants and smoking in public places be prohibited. The forest is a public place. Must the ban be imposed on the tribals in the forests?

The resolution demands that the States contribute to the Central exchequer (and the latter, as we shall see, must be confined to using the revenues for just four subjects) 'in proportion to their representation in Parliament'. In the Rajya Sabha and Lok Sabha separately or in the two taken together? If as seems to be the intention, states are to contribute in accordance with their population, some of our poorest states—UP, Bihar, etc. will have to contribute much more than the better off states like Maharashtra, Punjab, etc.

Several of the demands are indeed enigmatic. The resolution wants the Indian Constitution to be 'recast on real federal principles, with equal representation *at the centre* for all the states'. Equal representation in the Parliament? In the Cabinet? In the Supreme Court? What does 'at the centre' mean? And, whatever the centre, are we really to

have 'equal representation' for Sikkim with its 350,000, and UP with its 115 million?

In any event, as the resolution has become an article of faith, as the Akali leaders maintain that each of the demands listed in it must be met, we must through public debate and scrutiny ascertain the precise meaning even of these minor demands.

The Central Thesis

THE PRINCIPAL difficulty with the resolution, however, does not lie in any of these specific demands but in the basic political thesis of the resolution. This thesis consists of five propositions:

1. The Sikhs are a separate nation.
2. The Akali Dal and the Shiromani Gurdwara Prabandhak Committee are its representatives and spokesmen.
3. The aim of the Akali Dal is to establish the political supremacy of the Sikhs.
4. For doing so it will use 'all possible means'.
5. As a step towards this goal there must be a redistribution of territories between Punjab and the States around it, and a truly drastic redistribution of powers between the Centre and the States in general.

The first point has been asserted from every platform by the Akali leaders day in and day out. The resolution maintains that 'India is a federal and republican *geographical entity* of different languages, religions and cultures', that 'the Shiromani Akali Dal is the very embodiment of the hopes and aspirations of the *Sikh Nation...*', that 'the Shiromani Akali Dal aims at grooming *the Sikhs into a strong and sturdy Nation...*', etc. In March 1981 Longowal piloted a resolution asserting that 'The Sikhs constitute *a separate nation* as is evident from their religious, political or cultural past.' In October 1981 the Akali Dal sent to the Government the revised list of 15 demands. Number 9 in this list said, *inter alia*, 'Besides, *the Sikhs should enjoy special rights as a nation.*' This is the refrain of the speeches and statements of the leaders today. (Among other things, several specific demands flow from this proposition—for instance, the demand listed in the '45 demands' that 'the Sikh personal law' be recognised as a separate code.)

Next, as one separate nation, the Sikhs are said to have one set of representatives and spokesmen. 'The Shiromani Akali Dal', says the resolution, 'is the very embodiment of the hopes and aspirations of the

Sikh Nation and is fully entitled to its representation.' In the list of '45 demands', number 10 of the religious demands was that the SGPC be recognised 'as the only representative institution of the Sikhs'. In signing the Accord with the Akali Dal the Government has come perilously close to accepting this assertion, and by promising to enact legislation that will enable the Akali Dal to acquire control of Gurdwaras all over India it has undertaken to ensure that this assertion becomes a fact.

On the goal, the resolution is emphatic: 'The political goal of the Panth, without doubt, is enshrined in the commandments of the Tenth Lord, in the pages of Sikh history and in the very heart of the Khalsa Panth, the ultimate objective of which *is the pre-eminence of the Khalsa*. The fundamental policy of the Shiromani Akali Dal is *to seek the realisation of this birthright of the Khalsa* through creation of congenial environment and a political set-up.'

On the means to be adopted the resolution is equally emphatic: 'For attainment of this Aim (1) the Shiromani Akali Dal is determined to strive *by all possible means...*'

Now, the political goal of establishing 'the pre-eminence' of a group as a *religious* group is certainly not compatible with our continuance as a secular republic. And the resolve to pursue this objective 'by all possible means' is not compatible with our survival as a constitutional democracy. (Some of these points I have stressed earlier in 'The Troubles in Punjab', *Indian Express*, May 12, 13, 14, 1982. Recently these and related points have been stressed authoritatively by P.C. Chatterji in his thoughtful study, *Secular Values for Secular India*, New Delhi, 1984, and by Durga Das Basu, 'Constitutional Aspects of Sikh Separatism', extracted from his *Comparative Federalism*, Prentice Hall, New Delhi forthcoming).

As a step towards attaining the political goal of establishing 'the pre-eminence of the Khalsa', the resolution demands that specified territories in adjacent States be turned over to Punjab and that in the new set-up 'the Centre's interference would be restricted to Defence, Foreign Relations, Currency and General Communication'. All other departments it amplifies, 'would be in the jurisdiction of Punjab (and other States) which would be fully entitled to frame own laws' [*sic.*]—in one translation this is 'own Constitution'—'on these subjects for administration'.

A redistribution of powers of this kind will destroy our existence as

a single, unified country. To take just a few examples, is the 'new Punjab' to have an unrestricted right to frame laws about the powers of the judiciary, the criminal and civil codes, the qualifications for recruitment to government jobs, the rights that citizens will or will not have (equality before law, freedom of speech, freedom of association and movement)? Will it frame laws on whether minorities will have or will not have safeguards, on what can or cannot be taught in schools and colleges? If one goes by the resolution, the answer is certainly 'YES'—for all these matters fall outside defence, foreign relations, currency and communications, the only subjects on which the Centre can 'interfere'.

If the Akali Dal and its 'new Punjab' are to be allowed such rights and powers, surely these will also be granted to other communal and political groups and to other regions. Will we survive as one country then?

Legitimate Anxieties

THESE ANXIETIES, as has been correctly emphasised, are entirely in order. The resolution itself shows that the Akali Dal looks upon itself as a party of the Sikhs *as a religious group*. It states that 'the Akali Dal is the very embodiment of the hopes and aspirations of the Sikh nation and as such is fully entitled to its representation' (that is, to represent it), that 'The Shiromani Akali Dal aims at grooming the Sikhs into a strong and sturdy nation, highly educated, fully aware of its fundamental rights.'

In introducing the resolution the Dal's Secretary says that the objective of the Akali Dal 'has been the exaltation of *the Sikh Panth*', that in view of the situation 'the Shiromani Akali Dal has decided to redraw the aims and objectives of *the Sikh Panth* and to give a more vigorous lead for their achievements so that by so doing it may serve the larger interests of the Panth and also the country and thus live up to the expectations of the Sikhs'. He commends the resolution as a 'plan for a more glorious future of *the Panth*'.

Among the aims for which according to the resolution 'The Shiromani Akali Dal shall ever strive', the foremost are '(1) Propagation of Sikhism and its code of conduct, denunciation of atheism, and (2) To preserve and keep alive the concept of the *distinct and independent identity of the Panth* and to create an environment in which national sentiments and aspirations of the *Sikh Panth* will find full expression,

satisfaction and growth.' (The resolution lists two secular objectives too: fighting for equality and non-discrimination, and fighting against diseases, ill-health and intoxicants.)

Saying that 'The Shiromani Akali Dal considers it *its primary duty* to inculcate among *the Sikhs* fervour and pride in their rich religious heritage,' it lists for itself—that is, for a *political* party—ten duties that are purely religious. Given the assertions that have been made on behalf of the resolution, and the fact that few seem to have read the text, it is worth quoting these duties exactly as they are specified in the resolution. The resolution binds the Akali Dal to pursue the following programme:

1. Reiteration of the concept of the unicity (Oneness) of God, meditation on His name, recitation of Gurbani, renewal of faith in the ten Holy Sikh Gurus and the Holy Sri Guru Granth Sahib and other appropriate measures for such a purpose.
2. Grooming accomplished preachers, Ragis, Dhadis, and poets in the Sikh Missionary College for a more effective propagation of Sikhism, Sikh Philosophy, belief in Sikh code of conduct and Kirtan etc., at home and abroad, in schools and colleges, in villages and in cities as indeed at every place.
3. Baptising the Sikhs (Amrit Parchar) on a vast scale, with particular emphasis on schools and colleges of which the teachers and the taught shall be enthused through regular study circles.
4. Reinculcating the religious practice of *daswand* among the Sikhs (giving one-tenth of one's earnings for the welfare of the community).
5. Generating feelings of respect for the Sikh intellectuals, writers, preachers, Granthis, etc., who also, in turn, would be enthused to improve upon their accomplishments while conforming to the basic Sikh tenets and traditions.
6. Streamlining the Gurdwaras' administration by giving better training to their workers. Appropriate steps would also be taken to maintain Gurdwara buildings in proper condition. For such a purpose, the party representatives in the Shiromani Gurdwara Prabandhak Committee and local Committees would be directed time to time [*sic*] to pull their weight.
7. Making appropriate arrangements for the error-free publication of Gurbani; promoting research work in the ancient and

modern Sikh history as also its publication; rendering Gurbani in other languages and producing first-rate literature on Sikhism.

8. Taking appropriate steps for enactment of an All-India Gurdwara Act with a view to introduce improvements in the administration of the Gurdwaras throughout the country and to reintegrate the traditional preaching sects of Sikhism like the Udasis and Nirmalas with the mainstream of Sikhism without in any way encroaching on the properties of their respective individual *maths*.

9. Taking such steps as may be necessary to bring the Sikh Gurdwaras all over the world under a single system of administration with a view to run them according to the basic Sikh norms and to pool their sources [*sic*] for the dissemination of Sikhism on a wider and more impressive scale.

10. Striving for free access to all those holy Sikh shrines, including Nankana Sahib from which the Sikh Panth has been separated, for pilgrimage and proper upkeep.

Now, in a country whose Constitution establishes it to be a 'Sovereign Socialist Secular Democratic Republic', is it appropriate that a *political* party should be discharging such *purely religious* duties? That it should be using for its political work religious functionaries—preachers, Ragis, Dhadis, etc.? That its goal should be to establish the pre-eminence or supremacy of a religious group?

And if the country decides that this *is* appropriate, it should also decide what its attitude will be when other religious groups also begin using politics for religion and religion for politics in the same manner.

A Separate Nation?

EVEN MORE destructive in its potential for evil than the effects of these propositions of the resolution is its fundamental premise—that the Sikhs are a separate nation, that India is just 'a geographical entity', albeit for the time being 'a federal and republican' one.

The point here is not the rival assertions of Hindus but the facts of Sikh history: for instance, the sacrifice of a Guru like the gentle Guru Tegh Bahadur, executed explicitly for his defence of Hinduism, executed in the company of his Hindu devotees; the oft-quoted and

explicit pronouncements of the Gurus, of Guru Gobind Singh, for instance, when he declares his desire;

*Sakal jag mein Khalsa panth gaje
Jage dharm Hindu, sakal bhand bhaje*
(Let the pure triumph the world over
Let the Hindu dharma dawn and all untruth disappear.)

And when he records his aspiration,

*Dharm Ved maryada jag mein chalayun
Gau ghaat ka dosh jag se mitayun*
(May I spread the religion and custom of the Vedas in the world
And erase from it the sin of cow slaughter.)

There is more than anything else the Granth Sahib itself. As a reverential and diligent study (K.P. Agarwal, *Adi Shri Guru Granth Sahib Ki Mahima*, Bharat-Bharati, New Delhi, 1985) points out, the Granth Sahib invokes the name of Hari about *ten thousand* times, of Rama about *two thousand four hundred* times. It invokes Paarbrahma about 550 times, Onkar about 400 times. It invokes the authority of the Vedas, Puranas, Smritis about 350 times. The names of the *nirguna* Absolute—Jagdish, Nirankar, Niranjan, Atma, Paramatma, Parmeshwar, Antaryami, Purush, Kartar—are recounted about *two thousand six hundred* times. The name of the *saguna* deity—Gobind, Murari, Madhav, Saligram, Vishnu, Krishna, Sarangpani, Mukund, Thakur, Damodar, Vasudev, Mohan, Banwari, Madhusudan, Keshav, Chaturbhuj, etc.—are invoked about *two thousand* times. Vedic concepts such as the *neti-neti*, ‘not this, not this’, descriptions of the Absolute, Triguna, Brahmand, *jivan-mukta*, *turiya*, *amritpad*, *parampad*, *nirvana*, etc. are mentioned about *one thousand one hundred and fifty* times.

Anyone who reads the Granth Sahib is struck by the rapture of the Gurus when they describe Rama and Krishna, by their repeated affirmation that in this day and age, in this *Kalyuga*, the unfailing, indeed the only panacea is to chant the name of Rama. He is struck by the fact that their loving reverence for Yashoda and Krishna, for Krishna and Radha is as deep as that of Surdas and Mira, and for Rama as profound as that of Tulsidas. He sees that the Granth Sahib’s account of the

formless, attributeless absolute, its account of the deity-with-attributes, its account of the relation between the two, is not just indistinguishable from but is explicitly derived from the Vedas, the Upanishads and the Gita. He sees too that it recounts the legends of the Puranas—of Krishna and Sudama, of Prahlad and Hiranyakashyap—repeatedly.

Similarly, while it proclaims the monotheistic ideal, the God of the Granth Sahib does not, as the God of a religion like Islam does, punish or repel others. He enfolds and incorporates them, just as the Hindu God does. That is why the Granth Sahib, while proclaiming a monotheistic ideal, also reveres Rama, Krishna, etc. as *Avatars*: that is why, for instance, it sees Narsimha *as being present in* the pillar when Prahlad embraces it.

The Granth Sahib is an *inclusive* scripture: apart from the compositions of the Gurus it incorporates the work of sixteen *savants*—Jaidev, Farid, Nam Dev, Trilochan, Paramanand, Sadhna, Beni, Ramanand, Dhanna, Pipa, Sain, Kabir, Ravidas, Mira, Bhikhan and Surdas—that is, of Hindu *bhaktas* as well as Sufi mystics.

Moreover, as is well known, among the major works that the great warrior-poet Guru Gobind Singh composed were the *Ramavatar*, a paean to Lord Rama, and *Krishnavatar*, an equally devout work in praise of Lord Krishna.

A separate nation? When in the face of such facts the assertion is made, when it becomes the cornerstone of resolutions and the resolutions in turn become the bases of *Dharmyudhs*, only one of two inferences is possible: either that the Akali leaders are innocent and do not know what they are talking about—but as many of them recite the Granth Sahib daily, for instance, this does not seem likely—or that their politics now requires them to fan separateness and insecurity by such exhortations.

In either event the leaders should be engaged in the widest and minutest possible dialogue on the matter—about the bases of their rhetoric, about how far they propose to follow the logic of the proposition, and by what means.

Questions for all of us

BUT WE MUST do more than merely engage leaders in dialogue. Now that the Accord has given us a moment's respite each of us must

ponder the questions that this terrible period has thrown up. Should we see ourselves as and act as the members of a religious group and thus lead others to see themselves as and act as members of another—and in the end an equally zealous—religious group, or should we act as citizens working together to strengthen democratic institutions and secular values? Should we confine ourselves to peaceful and constitutional means or should we opt for ‘all possible means’ and have the State as well as mobs also use ‘all possible means’ and have the widest approval in doing so? Should we at the very first suggestion fight the rash and violent in our group, or should we condone or ignore them and then have mass terror deployed against the entire group?

The questions are for all of us, and not just for Sikhs or non-Sikhs alone, because all of us are apt all too often to see ourselves as and act as members of this group or that, rather than as members of a whole.

July 1985: Written immediately after the Punjab ‘Accord’ was signed by Rajiv Gandhi and the late Sant Longowal.

CHAPTER VII

The Pistol Jinnah Forged

INDIA IS JUST A geographical entity, a mere composite of cultures, religions, nations.' 'We are a separate nation and must have special rights as such.' 'Politics is for Religion, Religion is for Politics.' We hear these slogans every day. Often our leaders proclaim them merely because they have already exhausted the milder ones.

But, once introduced, the notions spread at lightning speed, and they acquire a life of their own. You cannot inflame followers over the years, and then switch them off one day. And they have a logic of their own too—to the point of devouring the leaders and movements that proclaim them.

For instance, in his *A History of the Sikhs* Khushwant Singh recalls that the expression 'The Sikhs are a separate nation' was first used just forty years ago, in 1944, by Master Tara Singh. Even in the sixties just a couple of 'intellectuals' were using it. By 1973 it became the basic postulate of the Anandpur Sahib Resolution. In 1981 Longowal piloted a resolution saying that the Sikhs are a separate nation and as such they must have special rights. Within a year, along with the assertions about Sikhs having been reduced to slavery, it became the basis of both Bhindranwale's speeches as well as the Akali

Dharmyudh. An 'Accord' has now been signed. Commending it to his flock in Anandpur Sahib, Longowal had this to say: 'This [the Accord] is a victory for the Panth. This is an agreement signed not once but on each page. This is as good as a treaty between two countries. Not since the era of Maharaja Ranjit Singh has such an agreement taken place between Punjab and Hindustan.' And within weeks he was gunned down by the very persons who had been inflamed by that kind of rhetoric.

There are many differences between the 1940s and today, and we will revert to the crucial one in a moment. The rhetoric of those days, the steps by which Jinnah and the Muslim League advanced from one proposition to the next, do not therefore constitute a parallel. But they do provide a benchmark. All of us—Sikhs, Hindus, whatever, leaders as well as followers—should recall that terrible descent and internalise the lessons from it. For, as has been well said, those who fail to learn from history are condemned to repeat it.

Jinnah's Steps

As is well known, Jinnah had left India and settled down in England in 1930, convinced that there was little that he could do here. He returned in 1935 in response to the requests of several Muslim leaders and set about galvanising the Muslim League for the 1937 elections. The League did not do as well as its leaders had hoped—it got only 108 out of a total of 1,585 seats; even out of the 482 seats reserved exclusively for Muslims, its share came to less than a quarter.

Jinnah now set about to 'unify' the Muslims 'under one Allah, and behind one flag, one slogan, one leader', to 'organise' the League so that it would become their sole spokesman, and, finally, to centralise authority within the League entirely in himself.

1. Henceforth his first proposition was to be that the entity 'India' was an artificial construct, that it was a mere geographical entity, that the country as it existed was something 'artificial', something that was being maintained solely by the force of British arms. 'The present artificial unity of India dates back only to the British conquest,' he told the Muslim League session at Lahore in March 1940 (the session at which the 'Pakistan resolution' was adopted) 'and is maintained by the British bayonet...' ¹ 'It must be realised that India was never a country or a nation,' he told the League's 29th Session. 'India's prob-

lem is international in this subcontinent and differences—cultural, social, political and economic—are so fundamental that they cannot be covered up, concealed or confused, but must be handled by all as realists...’² ‘I have explained in great detail the fundamental and vital differences between the Hindus and the Muslims,’ he told the League Legislators’ Convention in Delhi. ‘There never has been, for all these centuries, either social or political unity between these two major nations. The Indian unity that we talk of up to today is held by the British Government, and they have—by their ultimate sanction of the police and the army—maintained peace and law and order in this country....’³

2. The significant point about the Muslims, he began saying, was not that they were a quarter of the population of the country, that they were a minority. ‘It has always been taken for granted mistakenly that the Muslims are a minority,’ he told the Lahore Session, ‘and of course we have got used to it for a long time that these settled notions sometimes are very difficult to remove. The Musalmans are not a minority. The Musalmans are a nation by any definition....’ ‘The Musalmans are not a minority, as it is commonly known and understood....Musalmans are a nation according to any definition of a nation, and they must have their homelands, their territory and their State....’⁴

3. He maintained now that the Muslims and Hindus were not just two different nations but two completely and irrevocably opposed civilizations and therefore ‘to yoke together two such nations under a single State, one as a numerical minority and the other as a majority, must lead to growing discontent and the final destruction of any fabric that may be so built up for the Government of such a State.’ Meetings of the League would henceforth be decorated by banners and posters proclaiming his assertion:

We are a nation of a hundred million, and what is more, we are a nation with our own distinctive culture and civilization, language and literature, art and architecture, names and nomenclature, sense of value and proportion, legal laws and moral codes, customs and calendar, history and traditions, aptitudes and ambitions, in short, we have our own distinctive outlook on life and of life. By all canons of International Law we are a nation.⁵

Language? Names and nomenclature? Sense of value and proportion? Aptitudes? Ambitions? A 'nation' based on these? And were they in fact different? Assertion, incessant repetition were the argument.

The 'proofs' that were offered were often circular. The Hindus and Muslims have never got along, they *cannot* get along ever because they are fundamentally and irretrievably different. How do we know that they are fundamentally and irretrievably different? From the very fact, for one thing, said Jinnah, that they do not get along.⁶

4. As the Muslims were now taken to be a nation, and not a minority, he started saying, they must have a share in the apparatus of the State that was not merely proportionate to their share in the population—for that, remember, was no longer the significant fact about the Muslims—but one that would assure them a sense of security and honour. And the precise share that would assure them this sense of security and honour kept rising, of course.

Since the Minto-Morley Reforms of 1909 the Muslims had had separate electorates. Now Jinnah said that this was not sufficient at all. The Muslims—being a separate, and therefore an equal nation—must have complete parity with the Hindus. And they must have this parity not just, say, in the Viceroy's Council but in every part of the apparatus. Speaking in Madras in April 1941 at the 28th Session of the League, for instance, he declared that the only way in which the British could secure Muslim (i.e. the League's, i.e. Jinnah's) cooperation in the war effort was, first, to give 'a definite and categorical assurance to the Muslims of India that no interim or final Constitution will be adopted by the British Government without the consent and approval of Muslim India; and, second, that the British Government be 'ready and willing to associate Muslim leadership as an equal partner in the Government, both at the Centre and in the Provinces. In all Provinces,' he said, 'Muslim leadership must be fully treated as an equal and with an equal share in the authority and control of the Government, Central and Provincial.' If the Congress came in, he said, Muslim representation must be equal to that of the Hindus in the Executive Council. 'Otherwise they (i.e. the Muslims, i.e. the League, i.e. his nominees) should have the majority of the additional numbers, as it is obvious that the main burden and responsibility will be borne by the Muslims in that case.' In the Provinces where Section 93 operated, he said, non-official advisers should be appointed, adding, 'The number

should be fixed after discussion, and the majority of the non-official advisers should be representatives of Muslims....'⁷

5. Soon enough, of course, even parity was not enough. He had been maintaining, as we shall see, that the Congress represented merely the Hindus, but at least that it represented the Hindus. As he gathered speed, he began saying that the Congress represented the upper caste Hindus only. Thus, he now said, bodies such as the Executive Council and later the Interim Government must have representatives, not just of the League and the Congress but also—and separately—of the Scheduled Castes, of Sikhs, of Christians, of Parsis, etc. But as those latter representatives, though separate, were liable to side with the Congress in its quest of freedom for a united India, two further conditions must be satisfied in effect. First, the Muslim League, representing a separate nation, must have 50 per cent of the seats, and the remaining 50 per cent must be distributed among the rest—the high caste Hindus represented by the Congress, the Scheduled Castes, Sikhs, Christians, Parsis, etc.; and, second, Jinnah, while having the exclusive right to nominate Muslims, of course, must also be consulted on who would represent the non-Congress groups in the latter lot.⁸

And all this followed straight from the twin propositions: the Muslims are a separate nation, a beleaguered one, and therefore things must be so arranged that they can have a sense of security and dignity.

Notice that this sense of dignity and security could not be assured by merely having 50 per cent of the appointments in hand. Jinnah demanded an equal share in 'the authority and control of the Government'. In practice this meant *a veto*. This was justified on the grounds that the Muslims—a separate nation—were in imminent and perpetual danger, and that mere representation in the offices of State could never be sufficient guarantee against this danger. Moreover, the scope of the subjects over which the Muslims (i.e. the Muslim League, i.e. Jinnah) must have a veto grew longer and longer. At first it seemed to be confined to 'communal subjects'—that is to subjects, e.g. laws, that directly affected one community or another. It was soon put out that in fact the condition of communities was affected not so much by 'communal subjects' strictly construed as by what was decided about a broad range of national matters. The veto thus had to cover all national matters. Finally, as the interests of the Muslims were liable to be affected more by what shape the new Constitution took than by

anything else, the Muslims (i.e. the League, i.e. Jinnah) must have a veto on every aspect of the new Constitution.⁹ This soon became the credo of Muslim League resolutions, along with the threat that if a Constitution was brought into being without their consent 'the Musalmans would be forced to resort to every measure and method to resist it with all the power at their command,' that the resistance 'by Muslim India with all its might' 'will inevitably result in strife, bloodshed and misery the responsibility of which will rest on the British Government alone.'¹⁰

A separate nation. Therefore, parity. A beleaguered nation. Therefore, veto. A veto on communal affairs. Therefore on national affairs. Therefore on the Constitution. Therefore on whether India would stay as one country or not.

6. The last step flowed in a straight line from the first. For within three years of beginning his campaign Jinnah began saying that there just was no constitutional arrangement which would ensure for the Muslims that sense of security and dignity which was their due. There were two reasons for this, he said. First, the Hindus were 'a permanent majority' in the country; second, the only significant thing about a Hindu was that he was a Hindu—'It is plain,' he said, 'that you cannot get away from being a Hindu if you are a Hindu.'¹¹ Since Hindus would always act as Hindus—i.e. not as human beings, not as citizens but only as the members of the one bigoted, aggressive religion—and as their numbers ensured them 'a permanent majority', no Constitution could safeguard the Muslims within a united India.

A joint Constituent Assembly would not do because, by whatever formula its members were elected, the majority of Hindus in the electorate or the electoral college would ensure that in the Assembly the Muslims were outnumbered, and so the Assembly would start with a presumption in favour of a united India. Assuring the right to secede under such a scheme too would not do. 'The alleged power of the minority in the matter of secession in the document,' he said while dismissing the Cripps proposals, 'is illusory, as Hindu India will dominate the decision in favour of one all-India Union in all the provinces, and the Muslims in Bengal and the Punjab will be at the mercy of the Hindu minority in those provinces, who will exert themselves to the fullest extent and length for keeping the Musalmans tied to the chariot wheel of Hindudom. Thus the Musalmans will be doomed to subjection in all the provinces.'¹²

A federation would not do as, whatever the distribution of powers to begin with, 'once the units accept the basis of a federal Central Government, it follows that it will inevitably and out of sheer necessity resolve itself into an all powerful central authority; and the units will be compelled to grant and delegate more and more powers to the centre, which also can hold these units as connecting links—more or less like country councils or glorified municipalities or feudatory states under the central authority.' As a result, 'any scheme...(or) any proposal which has for its basis any conception or idea of Central Government—federal or confederal' was unacceptable, 'for it is bound to lead in the long run to the emasculation of the entire Muslim nation—socially, educationally, culturally, economically and politically—and to the establishment of Hindu majority Raj in this subcontinent.'¹³

In Jinnah's reckoning, the trouble with every solution proposed was that it gave weight to numbers—universal adult franchise, joint electorates, in fact democracy in any shape or form were equally evil for this reason. 'Muslim India cannot accept any Constitution which must necessarily result in a Hindu majority Government,' he declared. 'Hindus and Muslims brought together under a democratic system forced upon the minorities, can only mean Hindu Raj. Democracy of the kind with which the Congress High Command is enamoured would mean the complete destruction of what is most precious in Islam.'¹⁴ A Constitution for a united India and democracy were 'two carrots,' Jinnah said, that the British were 'dangling before donkeys'—'the leadership of Hindu India' being the 'donkeys'.¹⁵ Both were unacceptable, indeed *inconceivable*, and this too followed from his two-nation theory. 'Democracy,' he said, 'means, to begin with, majority rule. Majority rule in a single society is understandable, although even there it has failed. Representative Government in a single nation, harmonious and homogeneous, in one society, is understandable; but you have only got to apply your mind a few minutes: can such a system ever work or succeed when you have two different nations, more than two different nations?'¹⁶

The Congress declarations for democracy were a ruse; Jinnah's declarations *against* democracy, on the other hand, were actually a commitment to a higher form of democracy. 'We have made it clear that there cannot be any room for democracy when you have a nation working on these lines,' he declared in Delhi in 1943.

Not only have we evidence, but we have suffered and experienced that. When you talk of democracy, you mean Hindu Raj, to dominate over the Muslims, a totally different nation, different in culture, different in everything. You yourself are working for Hindu Nationalism and Hindu Raj.

Ladies and gentlemen, we learned democracy 1,300 years ago. It is in our blood, and it is as far away from the Hindu society as are the Arctic regions. You tell us that we are not democratic. It is we who have learned the lesson of equality and brotherhood of man. Among you, one caste will not take a cup of water from another. Is this democracy? Is this honesty? We are for democracy. But not the democracy of your conception, which will turn the whole of India into a Gandhi Ashram. One society and one nation will, by its permanent majority, destroy another nation or society in permanent minority—all that is dear to the minority.¹⁷

7. Thus, there was just no constitutional arrangement that could assure security and dignity to the Muslims in a united India. Partition alone would do that, he said, and so Pakistan must be the cornerstone of whatever was discussed or proposed. The creation of Pakistan, he further maintained, was not a device to divide India, but a device—indeed, the only device—to obtain freedom from the British, to ensure peace and Hindu-Muslim unity; it was, in fact, he said, in the interests of the Hindus themselves that he was advocating it.¹⁸

8. Once Partition was at hand, a few said that it was the League's 'last demand'. Not so, said the candid Suhrawardy who had organised the League for the killings in Bengal. 'Is Pakistan our last demand?' he asked the League Legislators' Convention in Delhi in April 1946, and responded, 'I will not attempt to give an answer. But that is our latest demand. I would like the Congress to recall that we in the past asked for much less, and we were prepared to accept the superior number of Hindus in a democratic constitution, but they turned down every one of our modest demands. Now there is nothing left for us except to demand separation....' He said that there were many Hindus who looked to the League for emancipation. What the Muslims wanted was only two corners in India at the present moment. 'If you wage war against us,' he said, 'I am not prepared to forecast the future.'¹⁹

Jinnah of course made the future too a matter of principle. The right to intervene too flowed directly from the propositions that the

Muslims were a separate nation, that the League was their sole spokesman and protector, and that Pakistan was being created for their advancement and protection. He told the same convention in his concluding address, 'We are not going to start with quarrels. We shall have enough to do, and they will have enough to do, but if they begin it and our minorities are ill-treated, Pakistan cannot remain a passive spectator. If Britain in Gladstone's time could intervene in Armenia in the name of the protection of minorities, why should it not be right for us to do so in the case of our minorities in Hindustan—if they are oppressed?'²⁰

Jinnah's Devices

BUT THAT TAKES us into the future. We should retrace our steps. By what devices did Jinnah enflame the sense of total and incompatible separateness, the psychosis among Muslims? His propaganda consisted of five assertions:

- What is significant about a Hindu is that he is a Hindu, not that he is another human being or another citizen, for he shall always act as a Hindu and not as a human being or a citizen.
- The Hindus are already organised into a murderous monolith; the Hindu Mahasabha, etc. are themselves strong, but they are just the tip.
- The Congressmen are nothing but Hindu Mahasabha-ites in disguise.
- Everything that the Congress does has one, singular and exclusive, objective—that is, to fulfil the Hindu dream of annihilating the Muslims.
- The Hindus are already subjecting the Muslims to unspeakable atrocities, suppression, discrimination; you can imagine what will happen when they acquire absolute power in a united India.

The assertions were repeated day in and day out—as self-evident truths that required no proof. One harangue was like the other, one occasion as good an opportunity to repeat the allegations as any other.

1. 'The Congress press may clamour as much as it likes,' he told the League session in Patna in December 1938.

They may bring out their morning, afternoon, evening and night editions; the Congress leaders may shout as much as they like that the Congress is a national body. But I say it is not true.

The Congress is nothing but a Hindu body. That is the truth and the Congress leaders know it. The presence of the few Muslims, the few misled and misguided ones, and the few who are there with ulterior motives, does not, cannot, make it a national body. I challenge anybody to deny that the Congress is not mainly a Hindu body. I ask, does the Congress represent the Muslims? (Repeated shouts of 'No, No') I ask does the Congress represent the Christians? ('No') I ask does the Congress represent the Scheduled Castes? ('No') I ask does the Congress represent the non-Brahmins? ('No') 'I say the Congress does not even represent all the Hindus. What about the Hindu Mahasabha? What about the Liberal Federation? The Congress, no doubt, is the largest single party in the country. But it is nothing more than that. It may arrogate to itself whatever titles it likes; the Congress High Command in the intoxication of power, like persons who are drunk, may make any claims it pleases them to make. But such claims cannot alter the true character of the Congress. It remains what it is—mainly a Hindu body.'²¹

'The Congress, I may tell you,' he told the session in Madras in 1941, 'is nothing more, nothing less than the solid body of Hindus behind it—and other offshoots and the little bodies and little *bachchas*, like the Hindu Mahasabha and the All-India Hindu League, Liberal Federation and other small little bits. They are all one. I do not say they are one in the sense that they necessarily approve of the actions of the Congress; but really, if anybody really represents Hindu India, it is the Congress.'²²

2. The only difference between the two, he insisted, was that 'the Congress masquerades under the name of nationalism, whereas the Hindu Mahasabha does not mince words.'²³ The one and exclusive objective of the Congress, he said, was to establish Hindu Raj, to subjugate the Muslims. 'One thing has been demonstrated beyond doubt,' he said in December 1938, 'namely that the Congress High Command wanted the Musalmans to be a mere understudy of the Congress, mere footpages of the Congress leaders, to be used, governed and brought to heel when they had served the purpose of the Congress. The Congress leaders wanted them to submit unconditionally to Hindu Raj. That game has now been fully exposed....' 'I say the whole idea behind the Congress leaders' move is once again to deceive the Muslims,' he

said in the same speech. '...If they get a majority, they will accept the Federation with utmost glee; and then they will begin to pursue their nefarious scheme of destroying the Muslim culture and organisation, and to build up the Congress organisation, as the one and only totalitarian organisation, on the Fascist pattern. Then they will be able to establish their ideal of Hindu Raj in Hindustan.'²⁴ His explanation for opposing the Quit India Movement was similar: 'So far as we are concerned, it is not a question of non-cooperation. It is a question of defence against the attitude the Congress has taken up since 1937, to dominate Musalmans and to establish, by hook or by crook, Hindu Raj and Hindu Government. We are defending ourselves against that monstrosity, those machinations and those designs...'²⁵

3. By his reckoning, *every* single thing that the Congress did was aimed solely at suppressing the Muslims, at establishing Hindu Raj. If at any moment the Congress made no special effort to reach out to the Muslims, the charge was that it did not care for them. If it tried to reach out to them through a 'mass-contact' programme, the charge was that it was trying to divide them. *Bande Mataram*, the efforts to propagate Hindustani, the Wardha Education Scheme, literally *everything* had one aim—to finish off the Muslims. His description of 'Gandhi's institutions' was typical: The Gandhi Ashram at Sevagram, Wardha, 'to be created 'to serve as the Vatican of Gandhism and the capital of the Congress; Gandhi Harijan Seva Sangh, 'to consolidate the Depressed Classes as integral parts of Hinduism and to prevent their conversion to Islam or Christianity'; Gandhi Hindi Prachar Sangha, 'to propagate Sanskritised Hindi as the State and national language of India and to displace Urdu from its place of primacy and popularity'; Gandhi Nagri Prachar Sabha, 'to propagate the idea that all Indian languages should be written in Devnagari script and to displace Urdu script'; Gandhi Wardha Talim Sangha, 'to propagate Gandhian principles of religion, spiritualism, national economy and nationalism through a State-controlled system of compulsory primary education. Under the Wardha scheme, the entire system of education of the country was sought to be made subservient to the propagation of Gandhism (which was only a new form of Hinduism to the exclusion of all other religions)', etc.²⁶

When the Congress started agitations in States like Hyderabad it was doing so, he said, to dislocate the Muslim rulers of these States.²⁷ When it demanded universal adult franchise and joint electorates, he

said it was doing so to swamp the Muslims.²⁸ In accepting the British Parliamentary model, he said, ‘...the High Command was actuated by the ambition to perpetuate the rule of a communally minded majority party...’²⁹ Its demand that the Governors must not interfere in the working of the popularly elected ministries ‘was only meant to confirm the tyranny of monopolist rule and to suppress the claims of the minority.’³⁰

Its individual disobedience movement ‘ostensibly for freedom of speech, is really meant to coerce the British Government to concede the Congress demands regarding the future Constitution of India, which are really and virtually for a transfer of sovereign powers to the Hindus and thus delegate the Muslim nation of 100 millions and the Indian minorities to the status of mere subjects of Hindu Raj throughout the country.’³¹ The Quit India Movement too was ‘in pursuance of their objective of establishing Congress Hindu domination in India,’ [it] is directed not only to coerce the British Government into handing over power to Hindu oligarchy, and thus disabling them from carrying out their moral obligations and pledges given to the Musalmans and other sections of the peoples of India from time to time, but also to force the Musalmans to submit and surrender to Congress terms and dictation....’³²

Indeed, the very demand for freedom for a united India, he said again and again, was just a euphemism for establishing the domination of Hindus over Muslims. ‘Is it possible to expect us unless we are unconscious—and we were unconscious before the war, but now we are fully conscious,’ he asked the League Session at Karachi in December 1943, ‘to expect Muslim India to agree to Akhand Hindustan and Hindu Raj in this subcontinent? (Shouts of “It is not possible.”) But that is the proposal, and they have not given up their dreams. On the other hand, there is the talk of independence. I ask, “Whose independence?” I warn you, and I have repeatedly warned you, they mean the independence of Hindu India and the slavery of Muslim India. Now what do we say? We say, “Pakistan.”’³³

In this way Jinnah fashioned a pair of spectacles for the Muslims he inflamed.

4. The other side of this coin—about the Congress being nothing but a Hindu organisation whose sole objective was to establish Hindu Raj—was that the Muslim League represented the Muslims, that it alone represented them. With a single-mindedness rare among our

politicians he ensured that the League was recognised as such and that he, in turn, was recognised as the League. The British were in any case eager to accept both his claims as a counter-weight to the Congress. The War buttressed their preferences with reason. As Jinnah put it to the Lahore session of the League in 1940,

After the war was declared, the Viceroy naturally wanted help from the Muslim League. It was only then that he realised that the Muslim League was a power. For it will be remembered that upto the time of the declaration of war, the Viceroy never thought of me, but of Gandhi and Gandhi alone. I have been the leader of an important party in the Legislature for a considerable time, larger than the one I have the honour to lead at present, the Muslim League Party in the Central Legislature. Yet, the Viceroy never thought of me before. Therefore, when I got this invitation from the Viceroy along with Mr. Gandhi, I wondered within myself why I was so suddenly promoted, and then I concluded that the answer was the 'All-India Muslim League', whose President I happen to be. I believe that was the worst shock that the Congress High Command received, because it challenged their sole authority to speak on behalf of India. And it is quite clear from the attitude of Mr. Gandhi and the High Command that they have not yet recovered from that shock. My point is that I want you to recognise the value, the importance, the significance of organising ourselves, I will not say anything more on the subject. (*Pirzada 2, pp. 329*)

And he berated Gandhiji and the Congress for not accepting him as the League, and the League as the Muslims' sole representative:

Why does not Mr. Gandhi agree—and I have suggested this to him more than once, and I repeat it again from this platform—why does not Mr. Gandhi honestly now acknowledge that the Congress is a Hindu Congress, that he does not represent anybody except the solid body of a Hindu people? Why should not Mr. Gandhi be proud to say, 'I am a Hindu, the Congress has solid Hindu backing?' I am not ashamed of saying that I am a Musalman. I am right I hope, and I think even a blind man must have been convinced by now, that the Muslim League has the

solid backing of the Musalmans of India. Why then all this camouflage? Why all these machinations? ...Why not come as a Hindu leader proudly representing your people and let me meet you proudly representing the Musalmans.... (Pirzada 2, pp. 333)

Gandhiji saw the mischief in all this, and always met Jinnah as an Indian meeting an Indian, as a person dedicated to emancipating his fellow men meeting a person similarly dedicated. But Jinnah never wavered from his goal of being the equal leader of another nation. When in the face of communal killings, on the prodding of Pandit Nehru and Mountbatten, and in spite of his strong disinclination to go anywhere near the thing (after all, the killings had resulted from Jinnah's 'Direct Action', and while Jinnah and his colleagues were pressing on with this programme, he, Gandhi, had been risking his life to save both Muslims and Hindus) when in spite of this disinclination, Gandhiji joined Mountbatten and Jinnah in signing a joint appeal for communal peace, *Dawn* was at once exultant, perverse and vicious:

There is novelty in the manner of the dramatic appeal which *the leaders of India's two nations have signed*, but there is hardly anything in it which the Qaid-i-Azam has not said before without anybody's prompting....

The next step should follow without much delay and in the logical sequence. We stress the word 'logical' advisedly because the very fact of the Viceroy having chosen the Qaid-i-Azam and Mr. Gandhi for the purpose of an appeal of this kind being conveyed to the public is tantamount to a *recognition that two voices and not one must speak in this context. Why is it necessary that the two should make such an appeal if it is not recognised that there are two peoples, two nations, who would respect their own respective leader only?*

It added:

Mr. Gandhi has been *persuaded* by the Viceroy to denounce violence 'for all time' as a means to the attainment of political ends, but the Mahatma's political heir and successor remains still unpersuaded.³⁴

Jinnah's object in signing the appeal was only to sign something as an equal of Mountbatten and Gandhiji. As Pyarelal records:

To expect the League to throw away the only 'pistol' which Jinnah had claimed they had forged, would have been wishful thinking. But Gandhiji reasoned with himself that even if the Muslim League was not sincere, the joint appeal having been issued at Mountbatten's instance, made by implication the Viceroy party to it and put upon him the burden of its full implementation, which he would not fail to discharge. This implication, the Viceroy has since stated, he did not accept, though he told Gandhiji that he would do everything in his power to help bring about communal peace. Be that as it may, Gandhiji felt this was not enough. But neither then nor with subsequent pleading could he induce the Viceroy to change. The peace appeal, consequently, remained a dead letter and Gandhiji expressed his disappointment over it more than once.³⁵

5. As he was the League, and as the League was the sole spokesman, the sole representative of the Muslims, the Muslims who did not toe Jinnah's line could be only one of two kinds: either fools or knaves. Thus, for instance, he said that Muslims who were with the Congress had been 'deceived by the high-sounding but insincere promises of the Congress, or have betrayed the Muslim cause by deserting the community and joining hands with its avowed opponents, in order to serve their own selfish ends,'³⁶ they were 'dupes of the Congress', 'betrayers',³⁷ 'careerists',³⁸ 'traitors, cranks, supermen or lunatics',³⁹ 'quisling Muslims'.⁴⁰ Their conduct was an even greater obstacle than 'the network of Congress and Mahasabha wiles'—'But the conduct of these dupes of the Congress and these betrayers well nigh dishearten(s) me,' he declared, 'and I sometimes ask myself if a community which can still produce so many foolish or treacherous men is worth striving for, praying for and weeping for. Yet, gentlemen, we must not, we cannot, we will not yield to despair....'⁴¹

It wasn't just that any Muslim who was with the Congress betrayed Islam, but any Muslim who opposed him. His outburst against Fazlul Haq at the League session in Delhi in April 1943 was typical:

They [the Muslims of Bengal] were persecuted and the Chief Minister, who I am ashamed to say was a Musalman. (Cries of 'Shame, Shame')...Ladies and gentlemen, if I were to give you an account of to what extent this Ministry headed by Fazlul Haq stooped—no decent human being could ever stoop to the foul methods he adopted...This tyranny, this persecution, this manoeuvring, these machinations in utter disregard of elementary principles of justice and fairplay, were resorted to by an organised government headed by Mr. Fazlul Haq. Thus we have gone through the crucible in Bengal and today Fazlul Haq is no more, and I hope for the rest of his life he will be no more. He often said that if he was a hindrance, he was willing to go. But he never went. I say with all due deliberation and with all responsibility that he was not only a hindrance but a curse to the politics of Bengal. He was a curse to the Musalmans because he betrayed us; he was a curse to the Hindus because he served them as a puppet and their creature. He has met his Waterloo. Let him now remain in St. Helena and repent for the rest of his life, and pray to God that He may forgive his sins. Bengal has therefore shown that there is no room for duplicity....It is now the voice of the League, the voice of the people, it is now the authority of the Millat that you have to bow to, though you may be the tallest poppy in the Muslim world.⁴²

Thus the Muslim League was the sole spokesman for the Muslims. He was the Muslim League. He spoke for the Millat. Those who did not agree with him were traitors and worse. Therefore, for instance, he insisted in 1937 that there could be no negotiations regarding Ministry formation, election of Speakers, etc. except through him. When he felt in July 1941 that the Premiers of Punjab, Assam and Sindh had been invited to join the National Defence Council without reference to him, he made them resign. Later he insisted that the League alone had the right to nominate Muslim members to the Executive Council, and later still to the Interim Government.

Two nations. Congress represents a part of one. The League is the sole and exclusive representative of the other. Hence, not just parity, but veto. On everything.

Scare-mongering Tactics

BEHIND ALL this was scare-mongering of the most blatant and vicious kind. The wildest allegation would be made about atrocities and injustices perpetrated by 'the Hindu Congress'. The offer of the Congress to have a British Chief Justice examine them would be contemptuously refused, and instead blatantly exaggerated 'Reports'—like the notorious Pirpur Report of 1938—would be released.

6. And there were tactics—to go on escalating the demands, to press for a set of demands, to grab what was conceded and then begin a barrage focusing on what remained, to adopt what Pandit Nehru characterised as 'the permanently negative attitude' to all proposals except his own.

7. And there were operating rules. Ally with any one who will serve your purpose, Jinnah told his followers:

I had a talk with some friends of the North-West Frontier Province. I am told that in that Province our co-religionists—credulous Pathans as they are—have been told that the Congress is for the good of the people, that the Muslim League is the supporter of Imperialism and an ally of Imperialism. I say there cannot be a greater falsehood than the allegation that the Muslim League is an ally of Imperialism. Inside the legislature or outside the legislature, have I on any single occasion supported Imperialism, not to speak of proving myself an ally of Imperialism? (Shouts of 'No, No'.)

I am sure that even if there were a few Muslims who had thought in the past that the Muslims might gain their ends through an alliance with British Imperialism, they have now been thoroughly disillusioned. I say the Muslim League is not going to be an ally of anyone, but would be the ally of even the devil if need be in the interest of Muslims.

It is not because we are in love with Imperialism; but in politics one has to play one's game as on a chess-board....⁴³

But trust no one, he told them:

I think it is a wise rule for everyone not to trust anybody too

much. Sometimes we are led to trust people; but when we find in actual experience that our trust has been betrayed, surely that ought to be sufficient lesson for any man not to continue his trust in those who have betrayed him.⁴⁴

8. Following such rules he was always fishing for allies who, though untrustworthy, could be used to counter the Congress demand for freedom for a united India. Speaking in Madras, he incited the 'Dravidianis':

In this sub-continent you have two different societies, the Muslim society and the Hindu society—and particularly in this land, there is another nation, that is the Dravidian.

This land is really Dravidistan, and imagine its 3 per cent of Brahmin high castes, by skilful manoeuvring and by skilful methods of electioneering, 3 per cent of them should secure a majority. Is this democracy or is this a farce? Therefore, I have the fullest sympathy and give my fullest support to the non-Brahmins, and I say to them: the only way for you to come into your own is to live your own life, according to your culture, according to your language—thank God that Hindi did not go far here—according to your own history—go ahead. I have every sympathy and shall do all to help, and you can establish Dravidistan where the 7 per cent Muslim population will stretch its hands of friendship and will live with you on lines of security, justice and fair play.⁴⁵

Next, the Scheduled Castes were separate too and the Congress, representing only the high caste Hindus, had no right to represent them in the Executive Council or the Interim Government.

Next, the Adivasis. They too are a separate nation, it was proclaimed. Feroze Khan Noon and others proposed that a separate area should be carved out for them in Bihar which would then on its own want to federate with Pakistan, as the Adivasis were closer to Islam than to Hinduism. 'For the 47 lakhs of Bihar Muslims', Noon wrote in April 1947,

there are two courses open: (a) they can move into Western Bengal involving exchange of population, (b) they can move

either to the North of the Ganges where their population is 22 per cent or to the South where their population is about 11 per cent. Inside Bihar, or Western Bengal, they can be given an area which will be federated with Pakistan. I am inclined to think that Adibasi tribesmen of Bihar Province will want to federate with Muslim Bengal and not Hindu Bihar. If a plebiscite of Adibasis were held, their verdict would be clear. If they had separate electorate [*sic*] today, they and the Muslims would form a majority in the Bihar Legislature. Jamshedpur with Tata (Iron) Works is in the Adibasi country and all the mineral resources of this tract are being exploited for the benefit of Akhand Hindustan. Adibasis, who eat beef and bury their dead, are as far apart from caste Hinduism as Islam or Christianity.⁴⁶

The overtures to the Sikhs and how they eventually came to be rejected are by now well known.

9. To pursue his objective Jinnah said that he would if necessary not just ally with the Devil, but that he would use *all possible means*.

'No settlement with the majority is possible,' he declared at the commencement of his campaign, 'as no Hindu leader speaking with any authority shows any concern or genuine desire for it. An honourable settlement can only be achieved among equals; and unless the two parties learn to respect and fear each other, there is no solid ground for any settlement. Offers for peace by the weaker party always mean a confession of weakness, and an invitation to aggression. Appeals to patriotism, justice and fair play and for goodwill fall flat. It does not require political wisdom to realise that all settlements and safeguards will be a scrap of paper unless they were backed up by power. Politics means power and not relying only on cries of justice or fair play or goodwill.' (*Pirzada 2*, pp. 269)

Soon enough the Muslim League leaders were saying, 'If Pakistan was not to be had on demand, we will have it by force.'⁴⁷ Jinnah would repeat the refrain at every opportunity.

Our formula, [he declared in Delhi] gives the Hindus three-fourths of this sub-continent... whereas, if the Congress demand is accepted, it is clear as daylight that we shall be thrown under the yoke not only of Hindu Raj but this present Congress Junta will still have the temerity to harp that they alone represent

India, and that they are the sole successors to step in and establish the Congress Raj in place of the British Raj—a position which is impossible and intolerable.

Muslim India will never agree to its realisation, and will be bound, and will have no other course open but to *resist it by every means possible*.

The British are threatened that if they don't surrender to the Congress demand there will be bloodshed, for which preparations are going on: that they will paralyse British trade, and they further threaten that the same will be the result if they favour Pakistan.

If, unfortunately, the British are stampeded by the threat of bloodshed, which is more a bluff than a reality, *this time Muslim India is not going to remain passive or neutral. It is going to play its part and face all dangers*. Mr. Nehru is greatly mistaken that there might be trouble, as he says, but not very much. He is still living in the atmosphere of 'Anand Bhavan'.⁴⁸

Others were quick to take the cue and spell out what was meant by the League 'playing its part'. Khan Abdul Qayum Khan said that during his journey to Delhi for the convention Muslim students had asked him when 'marching orders would be given by the Qaid-i-Azam', that if the British acceded to the Congress proposals, 'I hope that the Muslim nation will gather together and strike swiftly, so that a Central Government may never be established,' that 'If the British force the setting up of a Government of the *Akhand Hindustan* type, and if they decide that there should be one Constituent Assembly, then the Muslims will have no other alternative but to take to the sword and rebel against it.'

Shaukat Hayat Khan said, 'I represent the martial clans of Pakistan who do not believe in words but in action.' 'They will fight to death,' he said, 'if any attempt is made to subject their nation to the domination of anyone else. I speak for the Punjab soldier, and I say that three-quarter million demobilised soldiers in the Punjab are pledged to achieve Pakistan....' Turning to Jinnah, he said, 'You, Sir, are holding us back, and we beg of you to give the word of command. Let us prove to the doubting how we can and how we mean to defend our Pakistan.'

Feroze Khan Noon threatened that they might turn to Russia for support and that 'If Britain sells our freedom to gain the trade of

Akhand Hindustan, if the British force on us an *Akhand* Government, the destruction and havoc which Muslims will cause, will put to shame the deeds of Halaku Khan and Chengiz Khan, and the responsibility for this will be Britain's.....'⁴⁹

This logic reached its predictable goal in July 1946, when the League passed its 'Direct Action' resolution:

The Council of the All-India Muslim League is convinced that now the time has come for the Muslim Nation to resort to Direct Action to achieve Pakistan to assert their rights, to vindicate their honour and to get rid of the present British slavery and the contemplated future caste-Hindu Domination.

Concluding the session Jinnah declared, 'Today we have said goodbye to constitutions and constitutional methods,' and now 'we also have a pistol.'

Within a month the League commenced its 'Direct Action' by organising the great Calcutta killings and those in Noakhali, and then in Punjab and the NWFP.

Two nations. Two eternally incompatible nations. The right of one nation to have its way by all possible means. The forging of a pistol. The Direct Action. One straight line.

A Crucial Difference, but on Three Conditions

THERE ARE, of course, crucial differences between the position in the 1940s and the position now. The principal one among these is that at that time the apparatus of the State was in the hands of the British—in the hands, that is, of the very power that had assiduously and for half a century fomented divisions between Hindus and Muslims, the power for whom the independence movement led by Gandhiji was the Enemy Number One, the power that had decided that if it could no longer hold on to India it would at least break it up.

That the State apparatus was in hands sympathetic to his aim provided invaluable help to Jinnah. In day-to-day negotiations British officials, determined to thwart Gandhi and his men, would keep him posted about the position that the Congress was adopting, about what its private offers were, about the division of opinions among its senior leaders. And Jinnah could always be certain that however tortuous the course the Government might adopt, it would ultimately settle for the

position that would further his aim another notch. By the time he started preparing the League for 'Direct Action', and specially when he commenced it from August 1946, the fact that the army, police and bureaucracy were in the hands of the British proved decisive. Wavell, to take just one instance, refused to use his influence to have Suhrawardy put down the Calcutta and Noakhali killings by using the provincial police, and refused equally to send central forces for the purpose. 'The Provinces are autonomous,' he said. And when the 'Direct Action' reached NWFP, the effect of the Partisanship of the Governor, Olaf Caroe, on the one hand, and the 'helplessness' of Mountbatten on the other hand, was identical. The League thus could continue its work till all were convinced that Hindus and Muslims were indeed mortal enemies, that indeed they could not live together.

Moreover, the final outcome depended in a sense on the formal decision of the British—that is, of the Cabinet, of the Parliament in London. The British were to depart-by-agreement, they were not, for instance, being pushed out by military defeat. They were therefore not just an essential party in the negotiations. They were the referee too. Jinnah knew that he would not get Pakistan once the British left. That is why he was insistent that they must partition the country *before* leaving. 'Quit India,' Gandhiji said. 'Divide and Quit,' said Jinnah, and refused to deal with or through anyone but the British. 'But I would like to request Jinnah Saheb, implore him, to have direct talks with us, at least now,' Gandhiji told his prayer meeting on 4 June 1947, the day after the Working Committee conveyed its acceptance of the Partition plan to the Viceroy. 'Whatever has happened is all right, but now let us sit together and decide about the future. Let him forget about the Viceroy now, and let him invite us to come to any understanding he wishes to have, so that it is in the interest of all of us.'⁵⁰ The appeal was repeated the next day, the day after that, and the day after that too. But Jinnah knew that his advantage lay in the referee.

Today the final decisions depend on a government and Parliament elected by us. And the apparatus of governance is in hands that do not start with a predilection for dividing the country. This can be a decisive difference, but only on three conditions. First, the country must have the patience, the quiet determination to stay the course, to see wars of attrition to the end. Second, those who man the apparatus must accord overriding priority to maintaining the unity of the country; neither their attention nor their resolve must waver for a moment.

And, third, the apparatus itself must be made fighting fit. Neither a disembodied resolve, however strong, nor mere goodwill, however intense, can keep the country together.

Quite the contrary. That terrible decade, 1937-47, shows how things change in just ten years. In 1936 the League, even among the Muslims, was but one of a number of the smaller contending parties. By 1946 Partition had become inevitable. The decade shows how potent religion-as-poison can be. It shows how a person who is himself not religious—Jinnah's fondness for pork and ham was well-known, he could barely speak the Urdu he said was endangered—can in fact come to embody the passions and resentments of a religiously inflamed community. It shows how the resentments can be inflamed into hatred, how they can become real and potent even when the grounds for resentment are fabricated.

The decade shows that to combat the danger one must act in time—i.e. one must discern the *potential* inherent in a move, an event, and act to forestall it. To wait till its effects have matured, till all the data is in, is to consign oneself to certain defeat. It shows too that among the best indicators of what a leader or group is up to are the declarations of the leaders themselves. Such groups make no secret of their aim. The speeches of the leaders, the resolutions, and even more so the pamphlet-literature, the speeches of the second-rung leaders, all proclaim the goal, and what the group is going to do to attain it. The point is to study the speeches and resolutions diligently, and to take them seriously.

'Taking them seriously' means to recognise that *a new situation has arisen*, that a group and its leaders have declared war on the country. You cannot go on minding your personal affairs as of old, pursuing your personal businesses and careers as of old, and expect that, in spite of everyone going on in the old way, the new situation will somehow be overcome. To overcome the challenge the country must acquire the ability to defeat the Jinnahs in the field of *their* choice, that is—the field of power. It must fashion an answer to the 'pistol' that the Jinnahs forge.

How apathetic ninety per cent of us are. How we cavil and complain at the little inconveniences to which we are put by the efforts of others and of the State to meet the new situation. How we ignore the information that stares us in the face, how we wish the danger away, how we make believe that we have contained it by meeting the demands half-way, by appeasing the Jinnahs, that we have warded it off by the convoluted formulation, by clever words.

The Peril of Clever Words

PARTLY ON ACCOUNT of the actual power that the Muslim League was acquiring among the Muslims, and partly in the hope that just one more concession would satiate Jinnah, the Congress kept making one concession after another.

It had always maintained that its goal was freedom for a united India; that the British must go first because, as long as they were around, not only did they foment the League, but the League too felt no need to be reasonable for it knew that it could always get from the British what it did not from the Congress.

But soon enough the Congress started its slide from concession to concession.

Five features stand out in the sequence.

First, the Congress and its leaders had put themselves in a situation, as much psychological as real, in which at each turn they felt that the onus for finding a solution, for devising some new formula, was on them. Second, as at each step the previous formula had not placated Jinnah, the new one had necessarily to bend a bit further towards his position; at each step, in view of what had been conceded earlier, the latest concession seemed just an extension of what had already been granted earlier, a mere terminological amplification, and was often presented as such. Third, at each step one principle was said to inevitably imply the next—non-violence *implied* that we would not coerce anyone who wanted to leave the Union to stay against his will; non-coercion *implied* that we were committed to Partition-with-self-determination; Partition-with-self-determination *implied* that we were committed to Partition *per se*, and so on. Fourth, at each step the arguments were virtually identical—‘we have to be practical’; ‘there is no other way out’; ‘if we do not agree to this now, what will the world say of us; on the other hand, if we agree to this Jinnah will be put on the spot, *he* will have to prove his *bona fides* by working this formula rather than going on asking for more and more’; ‘but what is all the fuss about, we accepted the principle long ago, this is just an application of it’. Fifth, at each step clever words were there to camouflage what was being done—from others, of course, but most of all from ourselves.

It is a long and sorry tale. The slide began with convoluted formulations. In April 1942 the Working Committee said that it ‘cannot think in terms of compelling any territorial unit to remain in an Indian

Union against their declared and established will. While recognising this principle, the Committee feel that every effort should be made to create a common and cooperative national life. Acceptance of this principle inevitably involves that no changes should be made which would result in fresh problems being created and compulsion being exercised on other substantial groups within that area. Each territorial unit should have the fullest autonomy within the Union consistently with a strong national state.' For autonomy within a Union *as well as* for self-determination. For self-determination to the point of secession *as well as* for a cooperative national life.... Congressmen convinced themselves that this was nothing but the age-old Congress commitment to democracy. Congress leaders tried to convince Jinnah that he should not ask for more as, by such formulations, the Congress had in any case conceded the *principle* of Pakistan.

But why not concede the reality then, Jinnah countered.

By such steps the Congress accepted the principle of parity one day, the Cabinet Mission's Plan with its groupings of Provinces, its Sections, its weak Centre the next; a veto on communal matters for the League one day, a veto on all national affairs the next; the 'administrative partition' of Punjab and Bengal one day, the complete partition of the country the next; referendum in the NWFP without any intimidation one day, 'referendum' in spite of intimidation the next; a referendum on the question whether the NWFP would join Pakistan or India or would remain independent one day, a 'referendum' with the key question missing the next.

Throughout, Jinnah maintained what Pandit Nehru correctly characterised as his 'permanently negative attitude', and throughout, the Congress leaders kept feeling that the onus for finding yet another formula that might at last be acceptable to him lay upon them.

The Muslim League's 'Direct Action'—the killings in Calcutta and Noakhali, the retaliation in Bihar, the murders in Punjab and then in the NWFP—completely unnerved the Congress leaders. And there was the eight-month experience of trying to work the Interim Government. Jinnah had first agreed that the League would join the Government, then, pressing the advantage further, kept it out. He then had Liaquat Ali and others join it with the Muslim League leaders declaring explicitly that—whatever the objectives for which or principles on which the Interim Government had been formed—their men were going in to wreck it from within, to use it for achieving

Pakistan. 'We are going into the Interim Government to get a foothold to fight for our cherished goal of Pakistan.... The Interim Government is one of the fronts of "Direct Action"', said one. 'The League's participation in the new Government... only means that the struggle for Pakistan will now be carried on within as well as without the Government,' said another.⁵¹

League Ministers began packing their departments with their sympathisers. And Liaqat Ali used his stranglehold over the finance portfolio to well-nigh paralyse the Government.

The British Government prepared a plan for partitioning the country. On 2 June 1947 the Viceroy called the principal leaders—Pandit Nehru, Sardar Patel and Acharya Kripalani from the Congress, Jinnah, Liaqat Ali and Rab Nishtar from the League, plus Baldev Singh—for a meeting and obtained their concurrence. The Congress leaders in turn undertook to persuade the Working Committee and this they did successfully that very afternoon. The Committee sent its acceptance in writing that very day in the form of a letter to Acharya Kripalani, the Congress President.⁵² The plan was announced on 3 June.

And so when the All India Congress Committee met on 14 and 15 June 1947 to accept or reject the Plan to partition India, it had before it, not just the formal resolution of the Working Committee endorsing the Plan, but also the knowledge that the Plan had been announced only *after* the leaders and the Working Committee had given their prior consent.

The speeches that our leaders made at the session tear one's heart. Here were patriots of the first water, men and women who had sacrificed all for the country. But they were now tired, exhausted, beaten. The British had the State, Jinnah had the pistol. And they had only words. The speeches show how Jinnah's Direct Action had completely unnerved the Congress leaders, how by paralysing the Interim Government Jinnah had broken their patience, their will itself. All they wanted now was to get it over with, and to put on as brave a face as possible while doing so.

Pandit Pant moved the resolution. Maulana Azad seconded it. The resolution was full of the usual poetry:

The Congress has consistently upheld that the unity of India must be maintained. Ever since its inception, more than 60 years

ago, the National Congress has laboured for the realisation of a free and united India, and millions of our people have suffered in this great cause. Not only the labours and sacrifices of the past two generations but the long course of India's history and tradition bear witness to this essential unity. Geography and the mountains and the seas fashioned India as she is and no human agency can change that shape or come in the way of her final destiny. Economic circumstances and the insistent demands of international affairs make the unity of India still more necessary. The picture of India we have learnt to cherish will remain in our minds and hearts. The AICC earnestly trusts that when present passions have subsided, India's problems will be viewed in their proper perspective and the false doctrine of two nations in India will be discredited and discarded by all.

Acharya Kripalani, speaking as the President of the Congress said:

These ghastly experiences have no doubt affected my approach to the question. Some members have accused us that we have taken this decision out of fear. I must admit the truth of this charge, but not in the sense in which it is made. The fear is not for the lives lost or of the widows' wail or the orphans' cry or of the many houses burnt. The fear is that if we go on like this, retaliating and heaping indignities upon each other, we shall progressively reduce ourselves to a state of cannibalism and worse. In every fresh communal fight the most brutal and degraded acts of the previous fight become the norm. So we keep on degrading each other and all in the name of religion. I am a Hindu and am proud of the fact. But this is because Hinduism for me has stood for toleration, for truth and for non-violence, or at any rate for the clean violence of the brave. If it no more stands for these ideals and if in order to defend it people have to indulge in crimes worse than cannibalism then I must hang down my head in shame. And I may tell you that often I have felt and said that in these days one is ashamed to call oneself an Indian.

He recalled that he had been with Gandhiji for 30 years, that even when he differed with him he had deferred to Gandhiji's political instinct, and went on—

Today also I feel that he with his supreme fearlessness is correct and my stand is defective. Why then am I not with him? It is because I feel that he has as yet found no way of tackling the problem on a mass basis. When he taught us non-violent non-cooperation, he showed us a definite method which we had at least mechanically followed. Today he himself is groping in the dark. He was in Noakhali. His efforts eased the situation. Now he is in Bihar. The situation is again eased. But this does not solve in any way the flare-up in the Punjab. He says he is solving the problem of Hindu-Muslim unity for the whole of India in Bihar. Maybe. But it is difficult to see how that is being done. There are no definite steps, as in non-violent non-cooperation, that lead to the desired goal.

And then unfortunately for us today though he can enunciate policies they have in the main to be carried out by others and these others are not converted to his way of thinking.

He said he had already shown how the communal rioting could be stopped:

The Government in Bihar should have given a warning to the Government of Bengal that if the Hindus who were living in Bengal were cruelly treated, the Bihar Government with the best will in the world would not be able to protect the lives of the Muslims resident in Bihar. This would have meant that the issue had been raised to the international plane where organised governments deal with each other. The issue would have been taken out of the hands of the excited mob fury that knows no morality, no law, no restraint. Mob fury is always blind. International violence has at least some system and method about it.

He said that they should 'bend all our energies to the goal of unification which we have missed in order to achieve our freedom quickly. This can best be done by making India a strong, happy, democratic and socialist state where all citizens, irrespective of religion or caste, shall have equal opportunities of development. Such an India can win back the seceding children to its lap.'

He reminded the audience that the Working Committee had already sent its acceptance in writing and that too *before* the Plan was

announced. The AICC, he said, had met now either to ratify or to reject the commitment which had been made by the Working Committee. He explained that the resolution accepted the possibility of certain parts of India seceding from the Indian Union, but that, he reminded them, was already implied in the declared policy of the Congress.

Pandit Pant said that the resolution was 'the only way to achieve freedom and liberty for the country. It would assure an Indian Union, a strong Centre, which, in turn, would ensure progress and help their country take its rightful place in the world.' The Congress had worked hard and sacrificed everything for the sake of unity, he said, but there was a limit beyond which it could not go. The choice today was between accepting the statement of 3 June or committing suicide. Concluding, he said, 'it was better to accept the statement of June 3' rather than 'fritter away' energy 'trying to keep unwilling people in the Union.'

Maulana Azad affirmed that he 'did not think that the present decision was the right decision, but the Congress had no alternative. The choice before the Congress was not which plan to accept and which to reject, but whether the present state of indecision and drift should continue. There was the unfortunate problem of internal disorder and strife and there was the obstinacy of the Muslim League.' That is why, he said, they had opted for 'an immediate settlement'. 'The Congress stood by the ideal of a United India,' he said, 'but it was also committed to the principle of self-determination and was against coercing any unwilling areas to join the Union.'

Whatever be the result of the referendum, or whatever the Punjab and Bengal legislatures may decide just now, he was sure, he said, that those provinces which now sought to cut themselves away from India would in the very near future, hurry back to the Union. 'The division is only of the map of the country,' he said, 'and not in the hearts of the people and I am sure it is going to be a short-lived partition.'

A few speakers, from Purushottamdas Tandon to Maulana Hafizur Rahman and Ansar Harwani, opposed the resolution, characterising it as a 'surrender' and worse. Some were loftily enigmatic. Ram Manohar Lohia advised the AICC to remain neutral. While the resolution was bad, he said, they themselves were responsible for the acceptance of the Plan of 3 June. They could not blame the leaders as they themselves were weak and the leaders were therefore forced to accept the Government's proposals. Therefore, they could not vote

against it. On the other hand, as they had objections to it, they could not support it either.

Gandhiji had consistently maintained that, as long as the British were around, neither side would make the adjustments necessary to win the other as each would think that it could bargain with the British instead, that therefore the British must leave first, that if rivers of blood must flow before we learnt to settle our differences among ourselves, well, flow they must.

But the others did not have his patience. Day by day they turned their backs on him. It was June 1946. They had been negotiating with the Cabinet Mission. Gandhiji saw mischief in the crucial paragraph 19 of the statement. He and Sardar Patel met them. His doubts were confirmed but on the ride back Sardar Patel tried to press him into accepting what the Sardar thought was their categorical assurance on the matter. The Sardar wanted Gandhiji to give a 'yes' or 'no' immediately. He said they had promised to send their reply that afternoon. Eventually, that being his day of silence, Gandhiji scribbled, 'There is no question of my feelings being hurt. I am against deciding this issue today but you are free to decide as you wish.'

They met the Viceroy and the Cabinet Mission again that evening. Gandhiji's doubts hardened. He wrote to Cripps that night informing him that he would advise the Working Committee not to accept the plan with its ambiguities.

The end is best described in Pyarelal's words:

At 8 A.M. Bapu went to attend the Working Committee meeting. He asked me to read out the note which he had written to Cripps last night. He then addressed them very briefly, 'I admit defeat, you are not bound to act on my unsupported suspicion. You should follow my intuition only if it appeals to your reason. Otherwise you should take an independent course. I shall now leave with your permission. You should follow the dictates of your reason.'

A hush fell over the gathering. Nobody spoke for sometime. The Maulana Sahib with his unfailing alertness at once took in the situation. 'What do you desire? Is there any need to detain Bapu any further?' he asked. Everybody was silent. Everybody understood. In that hour of decision they had no need for Bapu. They decided to drop the pilot. Bapu returned to his residence.

The Working Committee again met at noon and addressed a letter to the Cabinet Mission, rejecting the proposal for the formation of the Interim Government at the Centre and accepting the long term plan with its own interpretation of the disputed clauses. In spite of that they made Bapu attend the afternoon session of the Working Committee. At noon the Cabinet Mission invited the members of the Working Committee to meet them. Bapu not being a member was not sent for and did not go. On their return nobody told Bapu a word about what had happened at the meeting.⁵³

Within a month Jinnah passed his 'Direct Action' resolution and within a month of that the great killings in Calcutta and Noakhali started. Gandhiji left for Noakhali. The leaders would visit him periodically for advice. They did so in late December 1946 too. Gandhiji warned them against accepting the *ex post* interpretation that the British Government was putting on the 'Groupings'. The AICC rejected his advice and decided to adopt the British Government's construction. 'When the news was broadcast it was received at night,' Nirmal Kumar Bose was to record later, 'and conveyed by a messenger to Gandhiji's camp. When the present author communicated the news, he distinctly remembers that Gandhi said to him, '*Yeh to mera khatma ho gaya* (This is my end).'⁵⁴

The League commenced 'Direct Action' next in Punjab. About 2,000 Hindus and Sikhs were killed, another 1,000 were seriously injured. The Congress leaders were appropriately unnerved. Gandhiji was in Bihar. Without so much as informing him, the Congress Working Committee passed a resolution demanding that Punjab and Bengal be partitioned. The resolution showed that the Congress had no answer to and no stomach for Jinnah's 'Direct Action', though Panditji and others said that this resolve to partition the two provinces would bring Jinnah to his senses and make him give up his proposal to divide India.

Gandhiji read about the resolution only in the newspapers. He was heart-broken. 'I think I did not know the reason behind the Working Committee resolution,' he wrote to Panditji. 'I cannot understand it,' he wrote to Sardar Patel.⁵⁵

That was in March 1947. Two more months passed, two months that showed even more clearly to Gandhiji that neither the country

nor the Congress had time for him any longer. The fear of chaos has seized the Congress leaders, he told his associates in Bihar, and it is this which is driving them to agree to Partition.⁵⁶ The Congress has practically decided to accept Partition,' he told Dr Mahmud just before leaving Patna for the crucial Working Committee meeting, 'but I have been a fighter all my life. I am going to Delhi to fight a losing battle.' In Delhi, he was rent by doubts. Mistaking the hands of his watch on 1 June, he awakened earlier than usual. 'As there was still half an hour before prayer,' Pyarelal records, 'he remained lying in bed and began to muse in a low voice:

The purity of my striving will be put to the test only now. Today I find myself all alone. Even the Sardar and Jawaharlal think that my reading of the situation is wrong and peace is sure to return if partition is agreed upon.... They do not like my telling the Viceroy that even if there is to be partition, it should not be through British intervention or under the British Rule.... They wonder if I have not deteriorated with age.... Nevertheless I must speak as I feel if I am to be a true and loyal friend to the Congress and to the British people, as I claim to be.... regardless of whether my advice is heeded or not. I see clearly that we are setting about this business the wrong way. We may not feel the full effect immediately, but I can see clearly that the future of independence gained at this price is going to be dark. I pray that God may not keep me alive to witness it....

'With a final effort,' Pyarelal records, 'he concluded,

I shall perhaps not be alive to witness it, but should the evil I apprehend overtake India and her independence be imperilled, let posterity know what agony this old soul went through thinking of it. Let it not be said that Gandhi was party to India's vivisection. But everybody is today impatient for independence. Therefore there is no other help.

'Using a well-known Gujarati metaphor,' says Pyarelal, 'he likened independence-cum-Partition to a "wooden loaf". If they [Congress leaders] eat it, they die of colic; if they leave it, they starve.'⁵⁷

Two days later, during his morning walk, he told Rajendra Prasad,

'Of late I have noticed that I very easily get irritated. That means I cannot now live for long. But my faith in God is daily becoming deeper and deeper. He alone is my true friend and companion. He never deserts even the least of His creatures.'

'In all probability the final seal will be set on the partition plan during the day,' Pyarelal records Gandhiji saying as he lay in his bath that day. 'But though I may be alone in holding this view, I repeat that the division of India can only do harm to the country's future. The slavery of 150 years is going to end, but from the look of things it does not seem as if independence will last as long. It hurts me to think that I can see nothing but evil in the partition plan. Maybe that just as God blinded my vision, so that I mistook the non-violence of the weak—which I now see is a misnomer and contradiction in terms—for true non-violence, he has again stricken me with blindness. If it should prove to be so, nobody would be happier than I.'⁵⁸

But the die had been cast. The impatience of his colleagues and the indifference of his people had taken the matter out of his hands. 'But now we must accept what is an accomplished fact,' he told his prayer meeting on 4 June. The Partition is already an accomplished fact, he told them again the next day, separate Constituent Assemblies have already been formed. 'The division is now a *fait accompli*,' he repeated two days later. The Working Committee was their authorised representative. It had issued a *hundi* on their behalf. They must honour it, though they may replace the Working Committee after doing so. 'I must confess that I am not happy about this decision,' he told them, 'but many things happen in the world that are not to our liking; and yet we have to put up with them. We have to put up with this thing in the same manner.' He was helpless, he told them. 'If you do not approve of the decision of the Working Committee you can frankly say so at the next AICC meeting. I have no intention to attend the session. I will attend if I am invited. But who is going to listen to my solitary voice? After all, you are the people. You can convey it to the Congress in a civil manner whether or not you approve of what it has done.'⁵⁹

14 June arrived. Gandhiji was disconsolate, torn. Talking to Manu Gandhi early that morning, he spoke of the great love that Pandit Nehru and the Sardar bore for him, and said, 'He [Jawaharlal] would be heart-broken if I hesitated to attend the AICC. He has made me a captive of his love.'⁶⁰ And so he went to address the session. His heart was not in it. He had not come to plead for the leaders of the Working

Committee, he said. 'Who will listen to my pleading? But the President [Acharya Kripalani] said that I should at least show my face here. Hence I have come to show my face and speak a few words.'⁶¹

'You will no doubt agree that no one could be as much hurt by the division of the country as I am,' he said, 'and I don't think that anyone can be unhappy today as I am. But what has happened has happened.' The Working Committee, he reminded them, acted on behalf of the Congress. 'If you reject it [the Working Committee resolution] the world will call you irresponsible.' The leaders had accepted the Partition 'because there was no other way. They now see it clearly that the country is already divided into two camps.'

'The decision that has been arrived at', he told the members in plain words, 'has been reached with your complicity and yet you complain of the Working Committee which has men of such great calibre.' It was easy to criticise the leaders, he said, but the critics should think out what they would do if they were in the leaders' place. 'I criticise them, of course, but afterwards what? Shall I assume the burdens that they are carrying? Shall I become a Nehru or a Sardar or a Rajendra Prasad? Even if you should put me in their place I do not know what I should be able to do.'

'You have a perfect right to do so [to reject the Working Committee's resolution] if you feel that you have the strength,' he told the members. 'But I do not find that strength in us today. If you had it I would also be with you and if I felt strong enough myself I would, alone, take up the flag of revolt. But today, I do not see the condition of doing so.'

He therefore advised them to accept the resolution without changing it in any way and set their minds to what was to be done in the future. 'We have to draw something good out of this bad thing,' he said. 'I am not the one to be upset by defeat.... We should draw out gold and diamonds even from mud.'

Pandit Nehru, the *Register* recorded, was 'outspoken'. 'India's heart has been broken,' he said, 'but her essential unity has not been destroyed. How will you repair the broken heart? It can be only on the basis of a programme for a partition.'

Pandit Nehru expressed his horror and disgust at the riots in the Punjab, Bengal and elsewhere and said that they were no isolated incidents. They were planned attacks. It seemed the

administration had broken down and there was no authority left in the country to enforce order.

After giving a resume of the events that led to the June 3 Statement, Pandit Nehru said that it would be a futile controversy to go into the merits of Dominion Status versus Independence. The most urgent task at present was to arrest the swift drift towards anarchy and chaos. Disruptive forces were at work and the most important disruptive force was that of the Muslim League. Their first task should be the establishment of a strong Central Government to rule the country firmly and to assure individuals liberty of life. All other questions were of secondary importance. Asserting that there was no question of any surrender to the Muslim League and that what he and his colleagues had agreed to was that the issue of partition should be referred to the people for a verdict, Pandit Nehru said that there was nothing novel in the plan for partition. The House would remember Mr. C. Rajagopalachari's formula on the basis of which Mahatma Gandhi carried on negotiations with Mr. Jinnah. At that time, he and his colleagues were in Ahmednagar Fort. They discussed the question in prison. While they disagreed with the approach to the whole question, there was no disagreement on the formula. It must be realised that it was not possible to coerce even with swords, unwilling parts to remain under the Indian domain. Had they been forced to stay in the Union, no progress and planning would be possible. They must take the warning from China. Continued internal strife and turmoil would bring the progress of a nation to a standstill.

In arriving at a decision, they must look at the international context as well. The picture of the world today was one of destruction and impoverishment which, by itself, might present an immediate war. But one could never say what would happen in the future.

The Congress, Pandit Nehru declared, could not afford to act in an irresponsible manner by passing high-sounding resolutions. A responsible body must not think in terms of today only; for there was tomorrow and a day after that. It would be ridiculous to suggest that the British should do everything before they quit the country.

The riots in Rawalpindi, Multan, Amritsar, Calcutta, Noakhali,

Bihar and elsewhere, Pandit Nehru said, presented the situation in a different light. To suggest that the Congress Working Committee took fright and therefore 'surrendered' was wrong. But it was correct to say that they were very much disturbed at the prevailing madness. Homesteads were burnt, women and children were murdered. Why, he asked, were all these tragic and brutal things happening? They could have checked them by resorting to the sword and the lathi. But would that solve the problem? Some people from the Punjab had said that the Congress had let them down. What was he to do? Should he send an army? He was sad and bitter and India's heart was broken. The victims in Rawalpindi said that they were being killed in order that the League might rule. The wound, he said, must be healed. With whatever they were able to salvage, they must plan out a programme on the basis of partition.

The Congress Working Committee passed a resolution in favour of the partition of the Punjab into two administrative provinces. Partition was better than murder of innocent citizens. After the resolution was passed, the Committee received numerous complaints from Bengal that Bengal also should be divided. The underlying principle in the case of the Punjab and Bengal was one and the same.

Deploring the disturbances in the country, Pandit Nehru reiterated that Government authority had almost collapsed. The British were no longer interested because they were leaving.

The acceptance of Dominion Status was without prejudice to the Republic Resolution adopted by the Constituent Assembly. But the composition of the present Government was such that no agreement could work and no convention could be established and the Viceroy, therefore, suggested the June 3 Statement and the Congress accepted it.

Pandit Nehru said that all talk of Pakistan and Hindustan was due to a misunderstanding. Both from the practical and legal point of view, India as an entity continued to exist except that certain provinces and parts of certain provinces now sought to secede. The seceding areas were free to have any relations they liked with foreign powers. The Government of India was intact and there should be no further confusion of Hindustan and Pakistan and people should not allow such ideas to grow.

Sardar Patel gave 'a vigorous speech', the *Register* recorded:

His experience in the Interim Government had convinced him, he said, that it was just as well that the State Paper had gone. Had they accepted the State Paper the whole of India would have gone the Pakistan way. Today they had 75 to 80 per cent of India which they could develop according to their genius and make it strong. The League could develop the rest of the country....

Nobody liked the division of India, he said, and his heart was heavy. But there were stark realities of which they should take notice. The choice was whether there should be just one division or many divisions. The fight today was not against the British. They had no desire to stay on in India and if they wished to stay they desired to do so only with India's consent.

The earlier May 16 Plan had no doubt given them a united India. The Congress had agreed to it in spite of its shortcomings. But the Plan could not be executed if one or the other party withheld cooperation. Thus the State Paper had been in the nature of an imposed award. But the position today was different. The Congress must face facts. It could not give way to emotionalism and sentimentality. They must coolly assess the pros and cons and arrive at a deliberate decision. Sardar Patel denied that the Working Committee accepted the Plan out of fear. They had never known fear. He deeply regretted the many massacres that had happened. In one family of 30, there were only two survivors. Many were maimed and disabled for life. They had gone through all that. But he was afraid of one thing and that was that all their toils and hard work these many years should not go to waste or prove unfruitful. They worked for independence and they should see as large a part of this country as possible become free and strong. Otherwise, there would be neither 'Akhand Hindustan' nor Pakistan. Further, taking any course other than the one which the Working Committee had suggested, would not only be injurious, but would also make the Congress the laughing stock of the world. Here was a chance for India to attain her independence. Was she going to throw it away? It would be incorrect to say: 'First, let the British go away. Then all questions could be solved.' How were they to be solved and what would happen afterwards?

His nine months in office, Sardar Patel said, had completely disillusioned him of the supposed merits of the State Paper. He had noticed that Muslim officials right from the top down to the *chaprasis*, except for a few honourable exceptions, were all for the Muslim League. There should be no mistake about it. Mutual recriminations and allegations were the order of the day. The May 16 Plan was gone and he was glad. That Plan left much room for conflict and bickerings. The Congress was opposed to Pakistan, but yet the resolution before the House accepted Partition. Whether the AICC liked it or not, there was already Pakistan in action both in the Punjab and in Bengal. In the circumstance, he would prefer the real Pakistan because then they would have some sense of responsibility.

The resolution was eventually put to vote; 157 votes were cast for it, 29 against. 'The House then adjourned for tea,' the *Register* records, 'after which the resolution on Indian States was taken up.'

Notice how the never-to-be-accepted had become the inevitable, how Jinnah had forced the Congress leaders to speak his very words, how they had neither Jinnah's stomach for violence nor the Mahatma's patience for riding it out. Notice how the best and the most dedicated of leaders made even this last step out to be just a logical extension—'There is nothing novel in the Plan for partition,' Panditji said—of what had been accepted earlier, how helpless the Congress leaders were because the State apparatus was in the hands of the British, and 'the pistol' was in the hands of Jinnah.

What will others say of us? Communal rioting could be stopped by being made an international matter? We could be reduced to cannibalism and worse? This was the way for India to get the seceding children back into its lap? We had to accept everything because whatever had happened had been done by the prior consent of our leaders? We should not fritter away our energies? What was being divided was just the map of the country and not the hearts of the people? India's heart had been broken but its essential unity had not been destroyed? The way to repair the broken heart was to partition the country? Partition was not a novel thing? The Congress was not giving in to coercion, but was just acting 'after realising the present situation'?

Words as soporifics.

Of course, the country was not partitioned because of what was said

or not said at this meeting. The meeting was just a wake. The country broke because of what had not been done in the preceding decades to forestall Jinnah and his men. One must act in time. And that is doubly so because, once done, these things can rarely be undone. Expressing his anguish at what was being done as well as his perennial faith that every wrong could be rectified, Gandhiji told his prayer meeting, 'I had already said that they should not worry about anarchy. I am, after all, a gambler. But who would listen to me? You do not listen to me. The Muslims have given me up. Nor can I fully convince the Congress of my point of view. I tried my best to bring the Congress round to accept the proposal of May 16. But now we must accept what is an accomplished fact. The wonderful thing about it is that we can undo it anytime we want.'⁶³ Acharya Kriplani talked of bringing the 'seceding children' back. The Maulana forecast that it was certain to be a short-lived Partition.

The Vital Lesson

WHY DON'T YOU lead a crusade to stop the partition, Gandhiji was asked repeatedly in those weeks. You used to say that the vivisection of India would be your vivisection, that India could be divided only over your dead body. Why don't you go on a fast unto death now?

But these were just words. Everyone was just putting on a brave face. Jinnah had no time for those who wanted Pakistan to be an Islamic State. Yet it ended that way. And predictably so. For these things have a logic of their own. He gave assurances upon assurances that minorities would be well treated. But we know what happened to the Hindus, in fact to all Bengalis—Muslims as well as Hindus—in East Pakistan, and what is happening to the Ahmediyas in Pakistan today. Nor did the creation of Pakistan emancipate the Muslims in Pakistan or India, as Jinnah had insisted it would. Yet what had been done could not be undone.

Hence, one must act in time. But *who* must act?

I feel no compulsion from within to do so, Gandhiji said. The Congress is the national organisation, and I am its servant, he said. It has accepted the division. Would fasting against it now not amount to insisting that it must do everything only after consulting me? 'If the Congress is seized with madness, should I also go mad? Should I die in order to prove that I alone was right?' In any case, the Partition is

already a *fait accompli*. Separate Constituent Assemblies have already been formed. 'Should I now die to nullify them? I am not going to die that way....' And so on.⁶⁴

But the main reason he pointed to was different: the people are no longer with me; in accepting the division of the country the Congress is indeed reflecting public opinion; in such circumstances there is little that a leader can do.

'You should not feel sorry in your heart that India is being divided into two,' he told his prayer gathering on 4 June. 'The demand has been granted because you asked for it....' 'Lately I have been receiving a large number of letters attacking me,' he said on 9 June. 'A friend points out how ineffective were my words when I said that vivisection of the country would be the vivisection of my body and calls me strongly to oppose the partition of the country.'

But I do not think I am in any way to blame in this matter. When I said that the country should not be divided I was confident that I had the support of the masses. But when the popular view is contrary to mine, should I force my view on the people? I have repeatedly said that we should not compromise with falsehood and wickedness. And today I can say with confidence that if all the non-Muslims were with me, I would not let India be divided. But I must admit that today the general opinion is not with me, and so I must step aside and stay back...⁶⁵

In the crucial meeting of the AICC, as we have seen, he frankly told the delegates that the decision had been taken with their complicity, that no one would listen to his pleading, that in view of the situation neither they nor he could now stand in the way of Partition.

In the months following the meeting too, many kept returning to the question. His answer was always the same: there is a limit to what a leader can do, he cannot go far beyond what the people themselves are prepared to suffer for, to put in.

It was August 1947. The people were killing each other. The country was hurtling towards independence and Partition. The massacres had brought Gandhiji back to Calcutta. Was his support of the Working Committee's resolution, N.K. Bose asked him, not aimed at protecting the leaders who had already decided to accept the Partition?

'It may bear that interpretation,' Gandhiji replied, 'but it is not true. With whom was I going to carry on the fight? Don't you realise that, as a result of one year of communal riots, the people of India have all become communal? They can see nothing beyond the communal

question. They are tired and frightened. The Congress has only represented this feeling of the whole nation. How can I then oppose it?’

But if he knew that Partition was wrong why did he not make the Congress alter its decision? Only the future could say right or wrong in supporting the decision, Gandhiji replied, ‘I felt that the situation was not ripe for my opposition.’

‘Could you not have *created* a situation?’ Bose asked him. ‘You have done so on many an occasion.’

‘I have never created a situation in my life,’ Gandhiji said. ‘I have one qualification which many of you do not possess. I can almost instinctively feel what is stirring in the heart of the masses. And when I feel that the forces of good are dimly stirring within, I depend upon them and build up a programme. And they respond. People say that I had created a situation; but I had done nothing except giving a shape to what was already there. Today I see no sign of such a healthy feeling....’⁶⁶

That is the significant lesson for us. If *we* do not inform ourselves of the declarations and programmes of the Jinnahs, if *we* do not locate and read the pamphlets of poison and hate, if *we* do not bother to head the evil that is in them, if *we* do not equip ourselves to forestall the evil they portend, if *we* are not prepared to suffer for the goal, if *we* have become ‘tired and frightened’, even a Gandhi cannot help us.

August 1984

Notes

1. M.A. Jinnah, Presidential Address to the 27th Session of the Muslim League, Lahore, March 1940, in *Foundations of Pakistan, All-India Muslim League Documents 1906-1947*, Volume II, p. 338, Syed Sharifuddin Pirzada (Editor), National Publishing House, Karachi, 1970 (henceforth, *Pirzada II*).
2. *Ibid.* p. 388.
3. *Ibid.* p. 508.
4. *Ibid.* pp. 337-8, for instance.
5. *Ibid.* p. 505.
6. *Ibid.* pp. 338, 416.

7. *Ibid.* pp. 365-6.
8. See, for instance, negotiations about representation at the Simla Conference and in the Interim Government, Pyarelal, *The Last Phase*, Volume I, Book I, pp. 131, 264, Navjivan, Ahmedabad, 1965.
9. On the last see, for instance, *Pirzada II*, pp. 334, 365.
10. As examples of the refrain see, for instance, the League's resolutions of 1940, 1941, 1943, *Pirzada II*, pp. 340, 373, 435.
11. *Ibid.* p. 335.
12. See Jinnah's Presidential Address to the 29th Session of the League, April 1942, *Pirzada II*, pp. 383-9.
13. *Ibid.* pp. 426-7.
14. *Ibid.* p. 338, see also 332-3.
15. *Ibid.* p. 361.
16. *Ibid.* pp. 361-2.
17. *Ibid.* p. 415.
18. See, for instance, *ibid.* 356-7, 380-2, 401, 418-19, 455.
19. *Ibid.* pp. 514-15.
20. *Ibid.* p. 524.
21. *Ibid.* pp. 304-5.
22. *Ibid.* p. 364.
23. *Ibid.* p. 268; see also p. 294.
24. *Ibid.* pp. 304, 308.
25. *Ibid.* p. 460.
26. *Ibid.* pp. 412-13.
27. *Ibid.* pp. 307-8, 319.
28. *Ibid.* p. 353.
29. *Ibid.* p. 355.
30. *Ibid.* p. 355.
31. Cf. Muslim League Resolution of April 1941, *ibid.* p. 373.
32. Muslim League Working Committee Resolution, August 1942, *ibid.* p. 395-96.
33. *Ibid.* p. 455.
34. Pyarelal, *The Last Phase*, Volume II, pp. 87-8 (*italics added*).
35. *Ibid.* p. 88.
36. *Ibid.* p. 286.
37. *Ibid.* p. 287.
38. *Ibid.* p. 303.
39. *Ibid.* p. 428.
40. *Ibid.* p. 549.
41. *Ibid.* pp. 286-7.
42. *Ibid.* p. 405.
43. *Ibid.* p. 309.
44. *Ibid.* p. 330.
45. *Ibid.* p. 362.
46. In *Divide Bihar*, Muslim Students Federation, April 1947, quoted in Pyarelal, *The Last Phase*, Volume I, Book II, Navjivan, Ahmedabad, 1966, pp. 316-18.
47. For instance, *ibid.* p. 483.
48. *Ibid.* pp. 509-10.

49. On all this, see *Pirzada II*, pp. 519-22.
50. *Collected Works*, Volume LXXXVIII, p. 76. See also pp. 85, 93-100.
51. Cf. Pyarelal, *The Last Phase*, Volume I, Book I, Navjivan, Ahmedabad, 1966, pp. 269, 274.
52. On all this, see for instance Pyarelal, *The Last Phase*, Volume II, Navjivan, Ahmedabad, 1958, pp. 212-16.
53. Pyarelal, *The Last Phase*, Volume I, Book I, Navjivan, Ahmedabad, 1965, pp. 227-8.
54. N.K. Bose, *Studies in Gandhism*, Navjivan, Ahmedabad, 1972, pp. 272-3.
55. Pyarelal, *The Last Phase*, Volume II, *op. cit.*, pp. 3, 10-11, 34-5.
56. *Ibid.* p. 200.
57. Pyarelal, *The Last Phase*, Volume II, *op. cit.*, 1958, pp. 210-11.
58. *Ibid.* p. 215.
59. On all this see his addresses at the prayer meetings on June 4 to 7, *Collected Works*, Volume LXXXVIII, pp. 75-6, 84, 97-9.
60. *Ibid.* p. 150.
61. The following is based on *Collected Works*, Volume LXXXVIII, pp. 153-7.
62. As noted earlier the preceding account of speeches at the meeting is taken, in large parts verbatim, from *The Indian Annual Register*, 1947, Volume I, pp. 122-37. See also, Pyarelal, *The Last Phase*, Volume II, Navjivan, Ahmedabad, 1958, pp. 242-57; and N.K. Bose, *Studies in Gandhism*, Navjivan, Ahmedabad, 1972, pp. 276-291.
63. Address at prayer meeting, 4 June 1947, *Collected Works*, Volume LXXXVIII, pp. 75-6.
64. *Collected Works* LXXXVIII, pp. 75-6, 83-5, 98-140.
65. *Collected Works*, LXXXVIII, pp. 117-18.
66. N.K. Bose, *Lectures on Gandhism*, Navjivan, Ahmedabad, 1971, pp. 111-12.

CHAPTER VIII

‘Come What May’

BY MARCH 1982, Mrs Gandhi's efforts to install a Congress-I government in Assam had finally fallen through. Her first nominee—Anwara Taimur—had fallen in six months. Her second—Keshab Gogoi—had fallen in two.

The High Command, as it is called, concluded that a Congress-I ministry just could not be formed with the existing Assembly. A new Assembly was the only way out.

The electoral strategy of the party was the familiar one: isolate the largest group; gather together the other groups; foment insecurity in them; then present yourself as the only available protector.

A single device was available for isolating the largest group, for dividing the people sharply, as well as for fomenting insecurity in the target groups: the electoral rolls should *not* be purged of the names of non-Indians. Purging these names had become a matter of principle in the entire Brahmaputra valley and so, if you could only ensure that the elections would be held without rectifying the rolls, everyone who could effectively oppose you would boycott the elections; half the task would thus be done without any other effort. Second, intelligence report after intelligence report assured you that, should you ram through an election without rectifying the rolls, violence would be the

certain consequence; the violence in turn could only heighten insecurity and fear among the target groups. Third, it was also evident, and it was so reported, that a 'firm stand' on this issue would be a sufficient signal about who was the only available protector, who was the only buffer between the target groups and deportation; and so, once you had taken a 'firm stand' on this issue, it would not be difficult to convince large enough numbers that the only way to avoid eviction would be to vote for the Congress-I.

And so the decision was: 'Elections, yes; but elections at all costs *without revising the rolls.*'

The Coterie

FOR RAMMING this sort of an election through, the Government needed a pliant election commissioner (whom it soon appointed) and a few men on the spot who would just shut their eyes and ears and go through the motions. To lead the latter coterie the Government had R.V. Subrahmanian, an officer who had proven his usefulness to the rulers by helping with the clearances for Maruti.

Soon after the imposition of President's Rule in March 1982 and his appointment as the Principal Advisor to the Governor—in effect that is, as the ruler of the state—Subrahmanian set about the task of ramming through the elections-without-revisions.

Meetings were held from May onwards to this end. Officers who showed the slightest reluctance to go through with whatever may be required were put out of harm's way. A commissioner who put his misgivings down in writing was forced to proceed on leave. A deputy commissioner who, in response to a query about what he would do if a situation developed in which people's lives were unsafe had said that he might even resort to the part of the Act under which he could cancel the poll, was swiftly shunted to the Secretariat. A small coterie of the select soon emerged: R.V. Subrahmanian, S.L. Khosla, the Chief Electoral Officer, a commissioner, two inspectors general of police and an all powerful, unheeding deputy commissioner. There were several others who helped, of course, but they were the cogs.

Members of this coterie, in particular Subrahmanian and Khosla, frequently visited districts to let everyone know that going through with the elections one way or another was all that mattered. Whenever officials in the districts drew their attention to the violence and

disruption that were certain to occur once the people had been provoked in such a manner, the officials were told (and explicitly so, I learn from these officials) that law and order were secondary.

Once the elections were announced on 7 January 1983, this process of acculturating everyone was institutionalised through a Security Coordination Meeting. The meeting began at 4 p.m. every day. About thirty officers attended it.

It was a monologue every single day. Subrahmanian would invariably begin with the chant: 'Elections must be held come what may, the flag must fly.' He would then proceed to recite what had been done the previous day, what the priorities were for the day. All discussion was blocked off. After 4 February, almost the entire time would be taken up by his narration of the requisitioning of polling personnel, of arrangements for looking after them, of where they would be sent and how, etc. Even as the State burnt, Subrahmanian and his men dedicated themselves to trivia, to ritual.

Setting the Stage

THE STAGE for a total breakdown, for a war of all against all, began to be set the moment it became clear that Mrs Gandhi had set her mind on elections.

The earliest exercises that were done of what was liable to develop once the elections were announced indicated that the people would be so enraged that violence would certainly follow. Consider the report sent by the superintendent of police (SP), Dibrugarh on 3 July 1982, to the inspector general of police (IGP), Special Branch (the part of police that deals with domestic intelligence), in response to his queries:

Office of the SP, DSP, Dibrugarh.

Secret

MEMO NO. DSB XIV/1/82

129/Dibrugarh 3rd July 1982.

To The I.G.P., S.B.

Assam, Kahilipara, Gauhati.

Subject: Assessment on situation if the general election is held.

Ref: Your Memo No. SB. 11(A)/ 62-A-82/ Vol-IV/ 216 dt.

21.5.82.

Sir,

With reference to above, I am to inform you that the matter was discussed in a meeting of the Circle Inspectors of this district on 26.6.82. The Gazetted police officers were also present in the discussion.

It was the opinion of the officers based on field experience that holding of the election after negotiated settlement of the foreigners issue will not be very difficult. *But holding of the same without such a settlement may be quite difficult. Such an attempt will be strongly resisted by the organisers of the agitation. They may succeed in creating large-scale lawlessness.*

[He next analyses the relative strength of different groups, the forms that violence will take as the election process proceeds and so on. He then comes to the final question.]

(v) Any remedial measures like shifting of the booths from and to any particular location etc.

There were about 1,100 polling booths in the last general election and on a close study of the location of the polling booths, it is observed that those are all located in schools/colleges/panchayat offices/T.E. clubs, *having no scope for shifting to safer zone. As such it would not be of much help.*

(vi) Proposed pattern of deployment of police, boothwise and districtwise, that you may think necessary.

Election without mass participation is meaningless. If government decides to hold election, an armed section will have to be deployed under one UBSI at each polling booth. Besides, each Assembly constituency will have to be divided into a number of sectors and each sector will have to be covered by adequate number of foot patrols, mobile patrols and VHF. Each Assembly constituency must be put in charge of a Dy. S.P. Sufficient *striking* force will be necessary at each P.S. and other strategic points. *Army will be required to stand by.*

It is suggested that election without a negotiated settlement may not be held. SP, DSB, Dibrugarh.

In August 1982, an exercise was carried out on the basis of such assessments and some mechanical rules of thumb to estimate how many men would be needed for protecting the booths, etc.; the total requirement came to 120 battalions. You can gauge the enormity of

what was thought necessary by recalling that the Central Reserve Police Force (CRPF) has only 76 battalions in all.

Now it was felt that if the Governor and his Principal Advisor Subrahmanian went to Delhi and requested 120 battalions, they would be taken to be saying, in effect, that they could not hold the elections. And so, rather than brand themselves with a stigma, they had the estimated requirement scaled down to 65 battalions.

Next, the incessant insistence of Subrahmanian & Co. as well as the bosses in Delhi shut off channels that conveyed inconvenient opinions. At last, much to their satisfaction, they began receiving the reports they wanted.

Intelligence Assessments

THUS, IN THE very first exercise in July, both the Intelligence Bureau and the Special Branch had stated that in 30 constituencies alone—of the total of 126—could elections be held in relative safety. But the question soon changed. From being in effect ‘In how many constituencies can we hold elections as we know them?’ the question became ‘In how many constituencies will we be able to complete the electoral process?’—that is, ‘In how many will we be able to complete the rituals associated with elections?’ Seventy-eight, said the Special Branch!

Later still the question was taken by all to have changed again. From being ‘In how many constituencies will we be able to complete the rituals associated with elections?’ in effect it became ‘In how many will we be able to proclaim one way or another that the ritual of elections has been completed?’ A hundred and five, said the Special Branch.

But that even going through the motions would entail large-scale violence was still being put on record by intelligence agencies. What they were now doing was to convey the data in more palatable forms: being even more vigorous in denouncing the movement leaders, conjuring up the Rashtriya Swayamsewak Sangh (RSS), making elaborate lists of ‘counter-measures’ that would be immediately necessary and, after each forecast of violence, adding that nonetheless ‘elections can still be held’.

Thus the one-and-a-half-inch-thick assessment of the Special Branch (No. SB XI (A)/SPC/20/82/Pt/TV/94) delivered by hand to

Subrahmanian on 20 November 1982, lists the prospects of violence in area after area (the assessment is boothwise) and ends with a ten-point 'counter-strategy'; the poll to be held in three clusters, maximum available force including Home Guards, etc. to be inducted, 'all out alert to the army as reserve force'.... 'total ban on the All Assam Karamchari Parishad and the All Assam Central and Semi-Government Employees Parishad', etc. Then the equivocation:

In approximately 78 constituencies, the election can be held where the voting is likely to be between 30 per cent to 65 per cent of the total electorate while in the remaining constituencies where large-scale troubles are anticipated, the voting will be anything between 1 per cent to 30 per cent. On the whole, election can be held in most of the constituencies with proper planning and preparation despite violence and resistance from anti-election forces.

The assessment report of 16 January (No. SB IX (A)/SPL/5/82/83/42) recapitulating the ever-growing incidents of violence, says that 'their [that is, the movement leaders'] failure to stir up mass agitation has made them more desperate and they are likely to step up terror tactics', (it then gives a list of what is likely to happen as each stage of the electoral process is rammed through), that they are 'adopting an action programme having strong violence potential', that 'the RSS elements have been hob-nobbing with the extremist elements of the AASU' and that 'the RSS link-up with the agitation may lead to communal conflagration'; it repeats that 'there is possibility of communal violence in vulnerable areas. Link-up of RSS elements and the agitation at many places indicate *a strong possibility of much communal disturbances in sensitive pockets just prior to the election or immediately after the election*', that 'available information indicates that the agitators will not be able to build up resistance in a mass scale but incidents of violence would increase as the polling dates draw nigh'. Don't worry about their analysis, just see the prospect they are pointing towards.

And then there is the ritual obeisance: 'Despite the attempts of agitation and extremist elements to create anarchy, the overall law and order situation in the state is still well under control. This is mainly because of the failure of the agitators to enlist mass participation towards the agitation in recent months....' And at the end a 'conclusion' in

which everyone can read what he wants: 'It was earlier indicated that in approximately 78 constituencies election can be held and in the remaining constituencies, there is likelihood of large-scale violence. The assessment still holds good. However, despite violence and stiff resistance, election can still be held in all the constituencies with proper planning and preparation.'

The Intelligence Bureau notes followed a similar strategy: convey your apprehension that violence is imminent but do so in the language they want to hear, do so in a language that shows you are clearly on their side. Quoting the documents at length would be repetitious. Here are two representative passages from the 'secret' briefing note prepared by the Bureau in end-January on the eve of the visit of senior Home Ministry officials to Assam:

With the completion of filing of nominations, scrutiny and withdrawal by candidates, a crucial phase of the election process in the State is over. The ability of more than 600 candidates to file their nominations *has made the agitators desperate* which has been manifested in various acts of violence directed mainly against the candidates, their supporters and Government property....

The Muslim communal parties in the State appear to be happy in view of large number of nominations filed by Muslims including from Congress-I and LDA. In view of the call for the boycott of elections by AASU/AAGSP, they expect a comparatively larger turnout by Muslims to vote compared to Assamese. This would mean victory to a larger number of Muslim candidates. The pressure of the agitators has till now been directed against the Hindu Assamese living within their areas of influence, while the Muslims living in the minority pockets have been relatively free from such pressure. *This is likely to generate communal feelings.* There was some communal tension in the Mangaldoi Sub-division after the murder of a Muslim by some suspected Assamese. The RSS leaders have asked the candidates to cooperate with the agitators in their 'non-violence programmes'. In the incident at Kamrup (Nowgong, 19 Jan.) two RSS leaders had taken part in instigating the mob to attack the police. The growing unhealthy interest shown by the RSS, to instigate the Assamese Hindus and the possibility of involvement of Muslim communal

parties to ensure victory of their supporters *holds potential of large-scale communal violence especially in the districts of Nowgong, Darrang and Kamrup*. The activities of RSS, therefore, need close watch, particularly in Nowgong and Cachar districts where they have strong base. *Strict watch has to be maintained on the communal situation in the State, particularly in Goalpara, Nowgong, Darrang, Kamrup and Cachar districts if a major outburst of communal carnage is to be prevented.*

More important than these warnings, the actual facts about what was happening were throughout reported scrupulously by the Special Branch and the Bureau. In January and February, the Bureau's Gauhati-Shillong-Delhi teleprinter line relayed data and reports literally 24 hours a day. Every report of killings, arson, group clashes, refusal of government servants to help in an illegal election, etc. was duly received here in Delhi. As days passed and the tension reached boiling point, a standard format was devised for providing a daily as well as a weekly summary of what was happening on the ground. At a single glance this page-long summary documented what was happening in each district under specific heads: murder; railways (sabotage, bomb explosions, obstruction/pelting); bombs (explosions, recoveries); arson (road-bridges, party offices/residences of candidates), and so on.

These Situation Reports (SITREPS in Bureau parlance) were often interspersed with editorial comments: the violence is taking on a communal and ethnic colour, things have deteriorated to an extent that 'walking out is an act of bravery', what has been a relatively peaceful movement is in the process of being pushed into becoming a secessionist movement, the 'coercive poll' will mark 'the beginning of insurgency'. For the moment I do not want to labour these comments but to drive home the point that the actual facts were being relayed faithfully and were enough to have alerted anyone that a war of all against all had broken out, that the State machinery had completely collapsed. Beginning from 7 January 1983, the day elections were announced, till the end of the elections on 21 February the Intelligence Bureau headquarters in Delhi received data about—to use police terminology—19,172 'violent incidents', ranging from murder to explosions to assaults.

The reports of the individual policer stations, of district police headquarters, of the Special Branch itself were specific, detailed and

accurate. The Special Branch also submitted an Election Situation Report three times a day.

Remember that reports and assessments of this kind were given to the Central Government, to Subrahmanian & Co. as well as to the Chief Electoral Officer, S.L. Khosla. Whatever editorialised passage he may quote from this assessment report or that to cover his position today, none can plead that he was not kept informed about the facts of what was happening. 'Even the biggest blockhead', a senior police officer twice repeated to me, 'could see what was happening.'

The Stage Set

BUT MORE THAN any of this, the decision to ram through the 'elections without revision' contributed to what transpired between 14 February and 18 February in four other ways.

First, it alienated—indeed, enraged—the people throughout the Brahmaputra valley. They felt humiliated, they now despaired of ever obtaining justice. The consequence was immediate. A state like Assam is difficult to police even in the best of circumstances. Darrang district, for instance, stretches across a distance longer by far than the distance from Delhi to Chandigarh. And in normal times, the district has just 1,000 to 1,200 policemen to maintain the peace. Thus, whether law and order will in fact prevail depends primarily on the temper of the people themselves. And by December the people throughout the Brahmaputra valley felt cheated, they felt they had been deliberately done in.

Second, and worse still, the decision rent asunder the State apparatus itself. The average policeman seethed with anger, he resolved to be an instrument no longer for suppressing his own people at the behest of what he now looked upon as the alien occupiers from Delhi.

Officers who were suspected of harbouring the slightest reservation about the decision had, as I noted, been put on the shelf. There were many, of course, who saw in the decision of the rulers an opportunity to prove themselves, who looked upon the Assam movement as a personal affront, who to this day talk of the Assamese as 'these people'. They now sat in every office of consequence. But the men of the police force hated them.

Third, the priorities of these officers too had by now been perverted. They saw that the rulers wanted only one thing: to be able to hold the

elections—nay, to go through the ritual of the elections—nay, to be able to proclaim one way or another that the ritual of the elections had been gone through. And so they, in turn, were dinning into their men that ‘election duty, election duty is all that matters’. And ‘election duty’ meant not ensuring a free and fair poll but merely making sure that the 8,000-odd officers, probationers and others who had been air-lifted for polling duty did not suffer any inconvenience, much less any bruises. ‘It has been such a god-damned struggle getting them here,’ they were told, ‘and they are frightened as hell; the moment just one of them gets hurt, all of them will run away. So, election duty is all that matters.’

An alienated, over-stretched force, a leadership looking the wrong way.

So complete was the breakdown that by early February, the top leadership of the police, instead of directing operations from headquarters, was frantically running from the scene of one violent clash to another. The flight schedules of helicopters show that, for instance, K.P.S. Gill, IGP (Law and Order) literally visited seven to eight district headquarters every day, not to prevent the carnage but, as was explained to me, just to hold forces from complete collapse.

Outside forces were, of course, inducted in large numbers, but the 65 battalions that are said to have been deployed were not of as much use as their numbers would suggest. Because of the rule that when units from outside are in an area to assist the local police, they are supposed to function under the officer commanding the local unit, the senior officers of the CRPF—who by this rule would have had to serve under their juniors—had not accompanied the units. The units were therefore leaderless. They were also unfamiliar with the terrain, the people, the language. They had to depend on the local Assam policemen for guidance. And these latter were not merely resentful but hostile—not only were their own people being suppressed, they felt, but here was the force of occupation. The hostility often burst into the open and at least at one place there was a pitched battle between the Assam Police and the CRPF in which, on the Government’s own admission, six jawans were killed.

Sensing hostility as well as indispensability, the CRPF units had become a law unto themselves: trigger-happy at one moment, sullen and fearful at others. The men insisted, for instance, that they would not move out on patrols or do anything at all except in section strength,

that is, in groups of seven or so. And in any case, like everyone else, the CRPF too was nailed to 'election duty'.

The fourth factor that set the stage was the silliest of all. No situation warranted the induction of the Army as this one did. Every intelligence report had urged that the Army be kept in readiness. But here the Chief Election Commissioner had put his foot down: the Army shall not be called out, he had laid down, for election duty or to maintain law and order; if altogether unavoidable, the Army may be requested only to help protect vital installations. The good man had thought that this would be the litmus test; once the State administration called out the Army to save lives, to maintain law and order, he would know that the conditions had deteriorated to such an extent that a free and fair poll could not be held. But, as you will see from a single instance, Subrahmanian & Co. would much rather sacrifice lives than fail any of the litmus tests.

On 2 February, a young IAS officer, Harshmohan Cairae, the additional deputy commissioner at Tezpur, sensing that the situation in his district had reached flashpoint, in fact, requisitioned the Army and he so informed everyone over the wireless. The men of the Special Branch also flashed signals to their headquarters in Gauhati that, contrary to the appearances that had to be kept up, the man had actually requisitioned the Army. No sooner did the information reach Subrahmanian, Khosla and Co. than they hit the ceiling. Tremendous pressure was put on Cairae to withdraw his order requisitioning the Army. He did not budge; the next day his superiors did what he had refused to do, they cancelled the requisition order.

But the incident had become too widely known, wireless messages had been sent, information had gone out in other ways also. And so a plausible cover-up had to be devised. Thus it transpired that at the Security Coordination meeting, Subrahmanian, apropos of nothing, began thanking the Army for its help in repairing the bridges in the State. As he was going on about this, the secretary of the Public Works Department remarked (this was to be one of the few interruptions of Subrahmanian's monologues in the one-and-a-half-month history of these meetings), 'Pardon my interruption, sir, but as you know, every bridge in the State has been repaired by and is being repaired by the Public Works Department.' Subrahmanian merely looked down at the table and resumed his monologue, 'We are all grateful to the Army for repairing the bridges...'

And it was Subrahmanian's version that was put out to the world. On February 4, the Government of Assam put out 'A Clarification'.

DISPUR, 4 FEBRUARY:—To help in speedy restoration of disrupted communications on National Highway between Sipajhar and Mangaldoi and to quickly recommission the burnt and damaged bridges, assistance of the Army was sought. The burnt bridges were repaired and normal communication restored on 3.2.83 afternoon. Except for providing the above technical assistance, Army was not called in to assist the civil authorities for maintenance of law and order. The action taken by the State Govt. has not violated any directive of the Election Commission of India in the utilisation of the armed forces.

'Elections must be held come what may,' as Subrahmanian used to say and, given the admonition of the Election Commission, elections could not be held if the Army was called out. As keeping appearances was more important than keeping lives, the Army was kept out. The one officer, Cairae, who did what the situation warranted, was swiftly disowned. (He was sent on indefinite leave to Moradabad.)

The stage was now set: the people split into warring camps; the average policeman gone hostile; officers beleaguered; an outside force hated, unaccountable, fearful; the one force that could have helped kept out; everyone nailed down to protecting and taking care of the two sets of people without whom the ritual could not be gone through: the candidates (with their families) and the polling officers.

When one reads the wireless messages from the field—the urgent calls for help, for reinforcements, the penultimate warnings—or those sent out from the headquarters—the warnings summarising the information coming from the field, the urgent reminders that such and such be done—one is transported into Kafka's world. Messages of life and death streak over the wireless but no one pays any heed, everyone is busy with 'election duty'.

I shall trace one sequence to take you to the lethal end.

First, read five wireless messages despatched by the inspector general of police (Special Branch) to all district police headquarters on 5, 25 and 29 January, and 12 and 14 February. Notice the mounting anxiety, notice the urgent directions for drills that have been prescribed earlier to be put into effect immediately. And remember that

these messages were not originating in a vacuum: these messages present in a sense the summary of countless warnings and pleas for help that were being received from the field:

CIPHER

TO: ALL DISPOLS EXCEPT SLC AND HFG GHTY (BY HAND)
FROM: IGP SB ASSAM GHTY
NO. SB IV/314/83/1 DT 5/1/83
REPORTS RECEIVED FROM VARIOUS SOURCES INDICATE THAT ANTI SOCIAL ELEMENTS AND COMMUNAL TROUBLE MONGERS ARE TRYING TO FOMENT COMMUNAL DISTURBANCES IN VULNERABLE POCKETS PARTICULARLY IN THE BRAHMAPUTRA VALLEY DISTTS IN ORDER TO SCUTTLE HOLDING OF ELECTION(.) PSE REVIEW COMMUNAL SITUATION IN YOUR RESPECTIVE DISTRICT AND TAKE ALL PRECAUTIONARY PREVENTIVE MEASURES AGAINST OUTBREAK OF ANY COMMUNAL VIOLENCE(.) UNDERSTAND YOU HAVE ALREADY MADE CONTINGENCY PLAN WHICH MAY BE MADE UP TO DATE TO MEET THE SITUATION(.) PSE REPORT COMPLIANCE(.)

CIPHER

TO: ALL DISPOLS DSB ASSAM/GHTY (BY HAND)(.)
FROM: IGP SB GHTY(.)
NO. SB IV/314/83/12 DT 25/1/83
SUBVERSIVE ACTIVITIES BY ANTI-ELECTION/EXTREMIST ELEMENTS BY WAY OF SABOTAGE/KIDNAPPING/MURDER ETC ASSUMED ALARMING PROPORTIONS SINCE LAST FEW DAYS(.) BUT ALL THESE TERRORIST ACTIVITIES OF AGITATIONISTS SO FAR FAILED TO DETER INTENDING CANDIDATES FROM PARTICIPATING IN ENSUING ELECTIONS(.) FOLLOWING SUCCESSFUL COMPLETION OF FILING OF NOMINATION PAPERS AND GOVERNMENTAL EFFORTS TO HOLD ELECTION PEACEFULLY AS PER SCHEDULE ANTI ELECTION/EXTREMIST ELEMENTS HAVE BECOME MORE DESPERATE(.) IN THEIR DESPERATE BID TO SCUTTLE ELECTIONS THESE ELEMENTS JOINTLY WITH THE RSS/BJP MAY PLUNGE THE STATE INTO A COMMUNAL TURMOIL BY RESORTING TO LARGE SCALE VIOLENCE ARSON/LOOTING/MURDER ETC. SUCH VIOLENCE MAY BE ASSAMESE BENGALI OR HINDU MUSLIM DEPENDING ON LOCAL SITUATION OF PLACES CONCERNED(.) IN FACT SOME SUCH INCIDENTS HAVE ALREADY TAKEN

PLACE HERE AND THERE(.) PROPOSED ANTI ELECTION MEETINGS/RALLIES TO BE HELD AT DIFFERENT PLACES BY BJP AND OTHER ANTI ELECTION POLITICAL PARTIES ARE LIKELY TO GENERATE HEAT AND TENSION LEADING TO COMMUNAL CLASHES(.) PSE ENSURE CLOSE WATCH AND EFFECTIVE ACTION TO PUT DOWN ALL SUCH TROUBLES AT THE VERY POINT OF ORIGIN WITH STRONG HAND(.) PSE ALSO REFER TO OUR EARLIER CIRCULARS

NO. SB IV/314/82/108 DT 10/12/82

NO. SB IV/314/6 DT 7/1/83

NO. SB IV/23/83/4 DT 19/1/83(.)

TAKE STRONG PREVENTIVE MEASURES AND FURNISH LIST OF RSS/BJP EXTREMIST ELEMENTS WHOSE DOSSIERS HAVE BEEN SUBMITTED TO DISTRICT MAGISTRATES FOR ACTION UNDER NSA URGENTLY(.)

WT MESSAGE CIPHER

TO: ALL DISPOLS DSB/GHTY

FROM: IGP SB ASSAM GHTY(.)

NO. SB IV/314/83/13 DT 29.1.83(.)

IT HAS BEEN NOTICED THAT A COMMUNAL SITUATION IS BUILDING UP FOLLOWING VARIOUS INCIDENTS OF ARSON/ASSAULT/MURDERS OF COMMUNAL NATURE IN DIFFERENT PARTS OF THE STATE(.) DURING LAST FEW DAYS BESIDES TWO REPORTS OF MURDERS FROM DARRANG AND NOWGONG DISTRICTS A NUMBER OF ARSON/ASSAULTS DIRECTED AGAINST THE MEMBERS OF RELIGIOUS/LINGUISTIC MINORITIES ARE POURING IN(.) THE TREND OF EVENTS SUGGESTS POSSIBILITY OF LARGE SCALE COMMUNAL FLARE UP IF NOT NIPPED IN THE BUD(.) EFFECTIVE STEPS TO PUT DOWN ANY SUCH DEVELOPMENT AT THE VERY POINT OF ORIGIN(.) PSE ALSO ENSURE ADEQUATE SECURITY TO ALL VULNERABLE MINORITY POCKETS AND SENSITIVE AREAS(.) IN THIS CONNECTION PSE REFER TO OUR INSTRUCTIONS CONVEYED IN CIPHER MESSAGE NO. SB IV/314/83/12 DT 25/1/83 AND CONFIRM ACTION URGENTLY.

TO: DISPOLS DBR/JHT/NWG/DPU/TZP/NL/DBB/GHTY (BY HANDX.)

FROM: IGP SB GHTY(.)

NO. SB IV/314/83/23 DT. 12.2.83(.)

RECENT DEVELOPMENTS INDICATE COMMUNAL SITUATION IN THE BRAHMAPUTRA VALLEY DISTRICTS AND KARBI ANGLONG IS DEVELOP-

ING VERY FAST(.) DIBRUGARH DISTRICT AFFECTED AREAS APPEAR TO BE CHAUBA, NAMRUP, JOYPUR, DIGBOI AND OTHER LIKELY AREAS TOOK, DOOMDOOMA, MORAN ETC(.) IN DARRANG DISTRICT GOHPUR, DHEKIA-JULI, RANGPARA, UDALGURI, PANERI, MAJBHAT, KALAIGAON, MANGAL-DOI, SIPAJHAR ETC AREAS HAVE WITNESSED COMMUNAL INCIDENTS(.) IN LAKHIMPUR DISTRICT NL/BIHPURIA AREAS HAVE BECOME VULNERABLE(.) IN KAMRUP DISTRICT BOKO PS, CHAYAGAON PS AREAS IN SOUTH BANK HAVE ALREADY SEEN COMMUNAL VIOLENCE(.) SIMILAR DEVELOPMENTS NOTICED IN HAWLY, SARUPETA, BHABANIPUR, CHENGA, BARMA, PATHSALA, SORBHOG ETC AREAS(.) IN NOWGONG AND SIBSAGAR DISTRICTS TENSION IS RUNNING HIGH AND SITUATION MAY LEAD TO OPEN CONFRONTATION AND ATTACK BETWEEN GROUPS BELONGING TO DIFFERENT COMMUNITIES(.) IN KARBI ANGLONG HOWRAHGHAT, BOWKAJAN AREAS HAVE BECOME VULNERABLE(.) RECENT INCIDENTS INDICATE MOB ATTACKS ARSON BEING CARRIED OUT IN PREPLANNED MANNER(.) IMPERATIVE TAKE STRONG PRECAUTIONARY PREVENTIVE MEASURES INCLUDING LARGE SCALE ARRESTS OF ANTI SOCIAL AND COMMUNAL ELEMENTS IN VULNERABLE AREAS AND DETENTION OF RING LEADERS BELONGING TO COMMUNAL/AGITATION ORGANIZATIONS INVOLVED IN ARSON/MOB VIOLENCE ETC(.) IN THIS CONNECTION PSE REFER TO OUR CIRCULAR NO. SB IV/314/83/20/ DT. 1.2.83 INDICATING VULNERABLE COMMUNAL POCKETS(.) REQUEST TAKE EFFECTIVE CONTINGENCY MEASURES TO STOP SPREAD OF COMMUNAL VIOLENCE(.) REPORT COMPLIANCE

WT MESSAGE OE

TO: ALL DISPOLS/GHTY (B.H.)

INFO: IGP LO GHTY (B.H.) DIGPOL WR GHTY (B.H.)/DIGPOL NER TZP/DIGPOL SR SLC/DIGPOL (BORDER) CAMP NWG/DIGPOL ER JHT(.)

FROM: IGP SB ASSAM GHTY

NO. SB IV/314/83/25 DT. 14/2/83

IN CONTEXT OF CURRENT ANTIPOLL AGITATION SEVERAL CLASHES BETWEEN LINGUISTIC AND RELIGIOUS GROUPS CAUSING LARGE SCALE ARSON/MURDER/LOOTING OF PROPERTIES HAVE TAKEN PLACE DURING THE LAST FEW DAYS IN BOKO CHAYAGAON BARPETA NALBARI AND HAJO PS AREAS (KAMRUP DISTRICT)

IN LAKHIMPUR DHEKAJI PS AREAS LAKHIMPUR DISTRICT GOHPUR PS

AREAS (DARRANG DISTRICT) JAGIROAD LAHARIGHAT MIKHIRBETA PS AREAS (NOWGONG DISTRICT) SITUATION APPEARS TO BE VERY SERIOUS AND ONLY SKETCHY REPORTS ARE RECEIVED HERE AND BY GOVERNMENT(.) PSE ENSURE INITIAL REPORT BY WT COVERING (1) NUMBER OF PEOPLE INVOLVED IN THE CLASHES COMMUNITY WISE (2) EXTENT OF LOSS OF PROPERTIES SUFFERED BY EACH COMMUNITY (3) LOSS OF HUMAN LIFE IF ANY WITH ALL DETAILS (4) NATURE OF WEAPONS USED (5) EXTENT OF POLICE ACTION INVOLVED IN DEALING WITH THE SITUATION (6) REASON FOR CLASHES (7) PROBABLE REPERCUSSION IN THE NEIGHBOURHOOD (8) ANY OTHER POINT OF IMPORTANCE(.) AN EXHAUSTIVE LIST OF MINORITY POCKETS AND COMMUNALLY SENSITIVE AREAS OF YOUR RESPECTIVE DISTRICT WAS SENT TO YOU VIDE OUR NO. SB IV/314/83/20 DT. 1.2.83 TO ENABLE YOU TO TAKE ADEQUATE MEASURES FOR DEALING WITH SUCH CLASHES. IN VIEW OF SERIOUSNESS OF DEVELOPING SITUATION PSE ENSURE EFFECTIVE MEASURES TO PREVENT SPREAD OF COMMUNAL VIOLENCE TO OTHER AREAS AS INSTRUCTED BY OUR CIPHER MESSAGES

NO. SB IV/314/83/23 DT. 12.2.83

NO. SB IV/1314/83/22 DT. 8.2.83

AND NO. SB IV/314/83/14 DT. 3.2.83

The warnings came true. On the police's own count, between 7 January, the day the decision to hold elections was announced, and 21 February, the day the polling finished, police opened fire on 202 occasions, killing (once again on the count of the police itself) 126 and injuring 162. Like the massacres, most of the firings were bunched around the days of polling.

Each of these warnings, each of these directives reached Nowgong too. In this district is a place called Marigaon. It has a substantial police station. The 5th Battalion of the Assam Police as well as a unit of the CRPF were stationed here.

Jagiroad, a smaller place in the area, has the police station in whose jurisdiction Nellie lies.

The Nellie Massacre

IN THE FORENOON of 18 February, 1,383 men, women and children (yes, thirteen hundred and eighty-three) were butchered in and around Nellie. (That isn't my estimate. It is the estimate contained in

the report on the Nellie massacre submitted on 5 March 1983, by Samar Das, inspector general of police, Special Branch, Government of Assam, to the Chief Minister and others.)

Notice, first, that the killings took place not in one isolated village but in ten—Nellie, Basundhari, Matiparbat, Bhogdobabil, Bhogdobhabi, Alisinga, Silbheta, Borjala, Muladhari and Borbori.

Notice, second, that these villages are not in the back of beyond. Nellie, in fact, is right on the national highway. All the villages lie across a completely flat plain. The police patrol post of Amsoi is just a kilometre from Borbori, the village where the most brutal massacre occurred. The Jagiroad police station under whose jurisdiction these villages fall is nearby, and the 5th Battalion of the Assam Police at Marigaon was only 10 km away.

Notice, third, that each time an exercise was done about the situation that would develop once elections were announced—specifically in July 1982 and again in October 1982 and yet again in December 1982—the entire area in which these villages lie had been identified by the district police as well as the Special Branch in Gauhati as being a likely trouble spot. Indeed, of the 10 villages in which people were eventually butchered, as many as six had been listed by name as being among the ‘minority pockets’ that were liable to be attacked. Of these six, two—Nellie and Alisinga—had not just been designated as ‘minority pockets’ in a general way, they had been specifically pinpointed as being among the seven ‘sensitive areas’ in Nowgong district where violence was not just possible but probable. The lists of these ‘minority pockets’ and ‘sensitive areas’ had been sent to each district and divisional headquarters, as had the lists of ‘anti-socials’ who had to be apprehended once the tension mounted.

Notice, fourth, that on 18 February it wasn’t as if five or six fellows had crept up stealthily in the cover of darkness and killed the 1,383 in one sudden, swift move. Quite the contrary:

- The mob that descended on Nellie and the surrounding villages was (and in all this I am going solely by the estimates of the police itself as contained in the report referred to earlier) 12,000 strong.

- The persons who joined it came not from one village but from a score of villages. Some of the villages are 18 to 20 km from the impact area.

- This enormous, ever-swelling mob set out around 5 a.m. It marched in broad daylight. It marched to the beating of drums.

- The killings commenced around 8 a.m. and went on for at least four hours.

All this is bad enough and bears testimony to the condition to which the law and order machinery of the state had been reduced. But while bad enough, it isn't all. The terrible fact is that the police had not just general but specific warnings well before 18 February about what was liable to happen.

Recall the warnings Nowgong was receiving from headquarters.

Notice next that the wireless messages originating in Nowgong itself bear testimony to the warning signals. I shall go no farther back than the wireless message sent from the district police headquarters on 10 February—that is, a full eight days before the massacre—as it links up with the messages from Gauhati that I have reproduced earlier.

WT MESSAGE O.E.

TO: ALL O/C DSB(.)

INFO: DY S.P. HQ/DY. SRP LMG/DFO(.)

FROM: DISPOL NWG(.)

NO. 1930-58/DSB DT. 10.2.83.

SIGNAL FROM IGP SB GHTY NO. SBII (A) 62-A-83/VOL/IL/191 DATED 9.2.83. IN VIEW OF INCREASING INCIDENTS OF VIOLENCE AND ATTACK ON MINORITIES IMPERATIVE ALL VULNERABLE MINORITY POCKETS BE INSULATED FROM OUTSIDERS/VIOLENT MOBS/EXTREMISTS(.) STEPS BE TAKEN TO COVER MINORITY POCKETS WITH ADEQUATE POLICE PICKETS/MOBILE PATROLLING TO ENSURE PROTECTION(.) PSE TAKE ACTION ACCORDINGLY(.)

Three days later—that is, five days before the massacre—the DIG at Nowgong directed the force to intensify patrolling in view of the extreme tensions that had developed:

WT MESSAGE O.E.

TO: ALL OCS/I/CS OP/CIS(.)

FROM: DIG(B) C/NWG

NO: 80/83 (CONTROL) DT. 13.2.83.

PSE INTENSIFY PATROLLING IN MINORITY POCKETS TO PREVENT ANY COMMUNAL TROUBLES(.) MAXIMUM AND EFFECTIVE USE SHOULD BE DONE OF FORCE PROVIDED TO YOU(.) INCIDENTS OF COMMUNAL NATURE SHOULD BE DEALT WITH VERY FIRMLY(.)

A second message—again five days before the massacre—from the SP was even more specific and urgent.

TO ALL OCS/ICS DY SP/COS
 INFO: CO. OF OUTSIDE POLICE BATTALION
 FROM: SP NWG DIG (B) C/NWG
 NO: N/1/14/2/83 DT. 13.2.83
 INCIDENTS OF COMMUNAL VIOLENCE HAVE BEEN REPORTED FROM SOME PARTS OF THE DISTRICT(.) IMMEDIATE POLICE ACTION ON THE SPOT OF VIOLENCE IS REQUIRED(.) ALL PRECAUTIONS TO BE TAKEN TO PREVENT ANY FURTHER FLARE UP PARTICULARLY IN THOSE AREAS WHERE POLLING IS TAKING PLACE ON 14/2/83(.) IMMEDIATELY SEARCHES/RAIDS SHOULD BE ORGANISED TO CATCH THE CULPRITS(.) INTENSIVE MOBILE PATROLLING IN THE EFFECTIVE SPOTS AND PLACES WHERE COMMUNAL TROUBLE IS APPREHENDED SOON AFTER POLLING IS OVER SENIOR OFFICERS SHOULD THEMSELVES ORGANIZE AND IMPLEMENT THESE ARRANGEMENTS TONIGHT ITSELF(.) ALL COMMUNAL VIOLENCE SHOULD BE DEALT WITH VERY FIRMLY(.)

On 14 February—four days before the massacre—the deputy commissioner at Nowgong sent a message specifically to the sub-deputy collector stationed at Jagiroad (the very place in the jurisdiction of whose police station lay Nellie):

WT MESSAGE O.E.

TO: SUB DEPUTY COLLECTOR J/ROAD(.)
 FROM: DEP COM NWG(.)
 DATED FOURTEENTH FEBRUARY(.)

YOU SHOULD KEEP WATCH OVER THE COMMUNAL SITUATION IN YOUR AREA SPLY AFTER THE POLL TODAY(.) IN CASE OF ANY COMMUNAL FLARE UPS IMMEDT. AND STRONG ACTION SHOULD BE TAKEN(.) YOU

SHOULD KEEP IN TOUCH WITH COMMANDT. CRPF SRI MOHAR SINGH(.)
NOWGONG CONTROL SHOULD BE KEPT INFORMED T/PHONE NO 405(.)

But the leadership of the force, from the inspectors general in Gauhati to the commandant in Marigaon to the officers in charge in Marigaon and Jagiroad, had been told again and again that their first task (and in the circumstances it meant their only task) was to protect the personnel who were said to be doing election duty. Moreover, by this time they were completely lost putting out the fires that were already raging—the killings at Sipajhar, Chamariya, Sipajhar again, Gohpur, Kharaibari, Goreshwar, etc. had followed one upon another. Worst of all, the decision to ram through the elections completely had divided the men through whose hands, after all, these officers had to act. Thus, nothing, but nothing, followed upon any one of the warnings.

On the afternoon of 15 February—three days before the massacre—Zahir-ud-din Ahmed, the officer-in-charge of Nowgong Police Station, sent the most specific of warnings to the commandant, of the 5th Battalion of Assam Police (stationed at Marigaon which is no more than 10 km from the Nellie area), the sub-divisional police officer at Marigaon as well as to the officer in charge of the police station at Jagiroad itself.

TO: CO. 5TH AP

INFO: O/C J/ROAD PS/SDPO (M)

FROM: O/C NWG PS(.) DT. 15.2.83

INFORMATION RECEIVED THAT L/NIGHT ABOUT ONE THOUSAND ASSAMESE OF SURROUNDING VILLAGES OF NELLIE WITH DEADLY WEAPONS ASSEMBLED AT NELLIE BY BEATING OF DRUMS(.) MINORITY PEOPLES ARE IN PANIC AND APPREHENDING ATTACK AT ANY MOMENT(.) SUBMISSION FOR IMMEDIATE ACTION TO MAINTAIN PEACE(.)

Although I had learnt of the condition to which the law and order machinery had been reduced well before I came across Zahir-ud-din's message, and although I have read Zahir-ud-din's message a dozen times since I first came across it, it still sends a chill down my spine. As does the fact that nothing followed upon it.

On 16 February—now two days before the massacre in and around Nellie—the Jagiroad police station received specific pleas for help.

On 18 February itself, as I noted earlier, the killings began around 8 a.m. Even if we go by his own account, the officer-in-charge of the Jagiroad police station received information about the killings at 10.35 a.m. (cf. entry number 467 dated 18.2.83 in the General Diary of the Jagiroad police station) and yet the police party accompanied by personnel from the CRPF did not reach the area till 3 p.m.

Nellie, as I noted, is on the national highway and the other villages are connected by *kutch*a but motorable roads that branch off from the highway.

And Nellie was just one of the massacres.

April 1983

CHAPTER IX

Killings, Communalism, the Foreign Hand and Art Paper

THE FOREIGN HAND. That insinuation was the Government's first attempt to explain away the killings in Assam. It did not work. Since then the rulers and their apologists have been peddling the other bogey; the Hindu communalists.

It is best in these matters to first let the rulers put out their alibis in full. The citizens can then contrast these with the facts and thereby get to know their rulers better. As the rulers have finally settled on the 'Hindu communalists' alibi, now is the time to record some facts about the killings. Notice first three facts about Nellie itself:

- First, in and around Nellie the Lalung tribals killed Bengali Muslims as well as Bengali Hindus indiscriminately. Even the most ardent of police informers have not detected or even so much as alleged that the RSS, etc. have acquired any influence among the Lalungs.
- Second, the police have information that while the massacre occurred on 18 February and while Zahir-ud-din, the officer-in-charge of Nowgong police station, sent his frantic message on 15 February, the trouble had actually started on 12 February—a full six days before the massacre. Villagers in and around Nellie had killed six Lalung children and had kidnapped four young Lalung women. It was to avenge the killings and to recover the girls that the Lalung tribals had gathered on

the night of 14 February, and it was to this gathering that Zahir-ud-din had referred in his message. The villagers responsible for kidnapping the young women have since been identified and arrested by the police. They have turned out to be immigrant Muslims.

● Third, Zahir-ud-din's message was sent, among others, to the commandant of the 5th battalion of the Assam Police, who was camping at Marigaon, just ten km from Nellie, with an entire battalion of Assam Police as well as a unit of the CRPF under his command. The commandant's name is M.N.A. Kabir. He joined the Assam Police in August 1963. He is a second-generation immigrant from what is now Bangladesh. And it so happens that he is a Muslim. Why did he not act? Is it that some communalists, some foreign intelligence agency, perhaps intercepted the message and prevented it from reaching him? Or, even more plausibly, is it that though a Muslim, he too was under the influence of some Hindu communalists? Or was it that he too was senselessly nailed down to 'election duty'?

Even the most cursory look at the pattern of violence shows how much of an oversimplification it is to attribute the killings to communalism. In Nellie, Lalung tribals killed Bengali Muslims and Hindus; in Kokrajhar subdivision, Boro Kacharis on the one side and Bengali Hindus and Muslims on the other killed each other; in Goreswar and Khairabari, Saranias and Boro Kacharis killed and were killed by Bengali Hindus; in Gohpur, Boros killed and were killed by Assamese Hindus; in Dhemaji and Janai, Mising tribals killed and were killed by Bengali Hindus and Muslims fighting together; in Samaguri, Muslims killed Hindus as they did in Dhaila and Thekrabari; in Chaalkhowa Chapori, Assamese Hindus and Muslims fighting together killed Bengali Muslims.

But it is not just an oversimplification to lay all the blame for this on communalism—a convenient oversimplification for some, an oversimplification born out of laziness for others. It is a dangerous oversimplification. And that, for at least two reasons:

- First, by beating the communalism drum even when the facts are otherwise, we feed the stereotypes, the prejudices that each community has about the other; we reinforce the notion in the mind of each community that the other is out to get it. In a very real sense thus, these oversimplifications incite hatred among communities and reinforce the very tendencies that, I take it, all of us want to alleviate.
- Second, by adopting such a facile explanation, an explanation that

has now become a mental cliché, we obscure the other—and, it so happens in the case of Assam—the truly important causes which we cannot neglect but at our peril. In particular, by adopting this cliché of an explanation we obscure the role of the state apparatus in fomenting divisions among our people, by its negligence, of course, but, as I shall show in a moment, by much worse acts as well.

There is not enough space to document the facts for each of the massacres and, in a sense, it is unnecessary to do so: the pattern is the same in all the cases. I shall, therefore, lead you through just one of the instances that, along with Nellie, has been much in the public eye: the killings and arson in the Gohpur area between 12 and 14 February 1983. I select this only in part because it has been in the public eye. As you will notice at the end of my narration on Gohpur, Mrs Gandhi has once again taken the precise step that is bound to exacerbate tensions in this very area, bound to do so in precisely the manner in which they rose earlier, and the consequences will be precisely the same.

As in the case of Nellie, there is some virtue in relying exclusively on the records and findings of the police itself: nothing shuts official propagandists up as do police documents! And in this case I shall use the findings not of the police in general but those of the Special Branch, the part of the police that deals with domestic intelligence.

There are two reasons for this. First, the Special Branch is the one that has been officially reconstructing the incidents most systematically. And, second, because, as every pressman who has been covering Assam knows, it is this very Special Branch that has done the most to push communalism as the explanation for everything: partly because its senior officials know that this is what everyone will swallow without a second thought and partly because this has been their way of ingratiating themselves with the rulers.

Gohpur

BETWEEN 12 AND 14 February, Boro Kacharis and Assamese killed each other and destroyed each other's houses with demonic fury in a 150 square km area in Darrang district. By the end, 43 Assamese villages and 30 Boro Kachari villages had been burnt to the ground. At least 30 had been killed by a frenzied mob—of these 19 were Assamese, 5 Kacharis, one Nepali and five others who could not be identified. Three died as a result of police firing. The death toll might eventually

turn out to be much higher as the lists submitted by the Boro Kacharis included 36 missing and those submitted by the Assamese included 21 missing.

Tension between the two communities has festered for long and has centred around the forcible occupation of land. Boros as well as landless tribals from Mangaldoi subdivision, North Kamrup and Kokrajhar belts, have been coming in large numbers and occupying the forest land. The Plains Tribals Council of Assam (PTCA) has actively encouraged them to occupy the land and has successfully thwarted the efforts of the forest authorities—efforts that were feeble in any case—to evict them. And the tribals have not been occupying the land for the fun of it: they have been pushed in turn. Thus, for instance, Boro occupation became specially aggressive after the 1978 troubles on the Assam Nagaland border. The fact that the governments of both the States have been too preoccupied, too opportunistic to do anything about land alienation, about enforcing laws and the like, has allowed the tensions to fester and grow.

Politics, as usual, has exacerbated the tensions. The PTCA, often at official instigation, has been demanding a separate State—Udayachal—and has been feeding Boros the line that the way for them to have their settlements regularised and made permanently secure is to rally round the demand for a separate State from which the Assamese could be pushed out or in which, at best, they would exist only on sufferance. The decision to ram the elections through lit the fuse. The Assamese had a natural affinity towards the AASU-AAGSP call for boycotting the elections-without-rectification-of-rolls, and, at least in part, for that very reason the Boros and other tribals were determined to vote. As the weeks passed, the rhetoric of all became more and more inflammatory. The violence of each legitimised the violence of the other. Eventually a few sparks were all that was needed. As is usual, the incidents that triggered the killings and arson were trivial in themselves. On 9 February the son of the PTCA candidate was kidnapped. A while later a blacksmith who had been making arrow tips for some Assamese clients stopped doing so on the asking of some Boros. He was beaten up by the Assamese for his refusal.

The tribals attacked on 12 February between 9 a.m. and 11.30 a.m. The villages of Nigam Krishni Pam, Kokilabazar, Taanigaon and Naharanigaon were devastated. The Assamese launched their counter-attacks on the following day. They were joined in these by the

Assamese from across the Sessa river. Violence and arson continued for three full days.

I shall give just two brief extracts from the police reconstruction to show how dangerously we oversimplify when we explain everything away by a single word: communalism.

Here is the first extract:

Interrogation of 6 Boro Kachari youths who were intercepted by villagers near Bedeti under Bihali PS reveals the complicity of the PTCA. Five of these youths were from Udalguri. Charan Mushahari s/o Lala Charan Mushahari of village N.C. Sonapur who was an L.P. school teacher at Alopura under Gohpur PS, Nareswar Basumatary and Ponon Basumatary s/o Jogan Basumatary of Rangapara PS, Udalguri, stated that the tribal population living in villages under Gohpur PS planned to attack the villages of the Assamese people with a view to claim Udayachal upto the rly [railway] line on the south from the foothills of Arunachal Pradesh. In different meetings held by the PTCA it was decided that the Assamese villagers would be driven out by use of force. In these meetings it was also decided that some tribal youths from Udalguri side would be brought to help the tribals in Gohpur area. To organise tribal youths at Udalguri, some tribal youngmen from Gohpur area had visited Udalguri and requested people there to send 200 volunteers. In the beginning of February some tribal youths from Udalguri side came to Gohpur. In a crucial meeting of the tribal people held at Goroi-mari paddy field at 2 p.m. on 11.2.83, it was decided to attack Assamese villages on 12.2.83 and arms and weapons were inspected in the meeting. Mention may be made that during the attack, the attackers raised slogans viz PTCA *zindabad*, *joi Udayachal zindabad*, *joi Ma Kali* etc.

Statements of Suren Basumatary, Nareswar Basumatary, Ponon Basumatary, Lawrence Basumatary enclosed.

And here is the second.

Information to police:

According to GDE [general diary entry] no. 320 of Gohpur PS [police station] dt. 12.2.83 one Shri Durgeswar Bora of Jarani-

gaon informed PS that 400 to 500 Boro Kacharis armed with various weapons were committing arson in the Assamese villages. The O/C [officer-in-charge] sent requisition to the CRPF camp-in-charge who is a platoon commander [sub-inspector] of adhoc delta Bn. CRPF. The ABSI [officer] incharge, however, refused to provide any force saying that he could provide men only on the orders of his Coy. [company] commander. The Coy. commander, incidentally, had gone along with Dy. SP [deputy superintendent of police] a probationer, Shri Thanggew in the morning to Hawajan in connection with investigation of a murder case.

As on 12.2.83, Gohpur PS Aleka had five platoons of CRPF deployed there, out of these, two platoons were at Gohpur proper, two platoons at Ghanhigaon and one platoon at Hawajan. At the time of submitting the requisition by O/C, the CRPF unit at Gohpur could have easily provided one platoon for duty. It was only after 9 p.m., after the return of the CRPF Coy. commander that the O/C proceeded to the PS along with the probationer Dy. SP Coy. commander CRPF and two sections of force. The O/C Gohpur PS claims that he had sent wireless requisition to I/C [incharge] Ghanhigaon OP [outpost] for sending some force at 4 p.m. (vide GDE 322 dt 12.2.83). Ghanhigaon OPGDE no. 207 dt 12.2.83 says that the messages were received only at 6.30 p.m. and that incharge faced the same difficulties in getting some force from Ghanhigaon CRPF unit also. But by 7.30 p.m. the I/C convinced the platoon commander there and sent some force to Gohpur PS. However, upon reaching Gohpur the CRPF detachment allegedly refused to go with the O/C out of Gohpur.

It will be clearly seen from the above that officer-in-charge Hohpur could not take prompt action to contain situation due to nonavailability of forces in spite of presence of 5 platoons of CRPF within his area. The superintendent of police, Darrang had sent a signal to commandant delta Bn CRPF at Biswanath Chariali requesting him to proceed to Gohpur, but he informed the SP that a senior officer of Assam Police should accompany him. Meanwhile, the SP asked Dy. SP Biswanath Chariali, Shri N.K. Sinha to proceed to Gohpur with one platoon CRPF from Behali, another platoon from Biswanath Chariali. The platoon

from Biswanath Chariali again made unusual delay and started from there at 10 p.m. The next morning trouble again erupted at various places...

It is obvious that the trouble could spread, affecting so many villages, and continue for three days from 12 February, taking toll of so many lives only because of the inaction of the police force at various levels. Except for the lone visit and opening of fire twice at Jaranigaon on 13 February, the police force in the area did little to intervene or prevent the large-scale violence in the area.

What do these facts show? The foreign hand? Hindu communalists? Do they not, instead, show the perverse pattern of our politics and the total bankruptcy of the state apparatus? Nor should you think that these are things of the past. Recall the role of the PTCA in fomenting tension; recall the mischief that its demand for a separate State—Udayachal—has played in all this, the mischief that it has perpetrated by insinuating that the tribals will stand to gain from the separate State because the Assamese will then be pushed out of the area completely. And now read the news report in the *Times of India* of 21 May 1983 under the heading 'PM sympathetic to Assam Plains Tribals demand':

The Prime Minister, Mrs Indira Gandhi, told a delegation of plains tribals of Assam that one major constraint in granting its demand for a separate union territory was the lack of two-thirds majority for the ruling party in the Rajya Sabha...Nevertheless, Mrs Gandhi evinced interest in the demand. She met the delegation twice and studied the maps of the proposed union territory and other relevant documents submitted to her by the delegation. Named Udayachal by the Plains Tribal Council of Assam, the proposed territory covers the entire district of Lakhimpur and parts of six other districts of the state...

Even the death of thousands has taught our leaders nothing. Or has it? Has it confirmed them in their ways? Has it proven to them once again that the one sure way to acquire constituencies is to foment fear and that the one sure way to foment fear is to set people at each other's throats?

Thus, like the foreign hand, the communalism bogey does not stick. What sticks is the politics of our rulers, what stick are the preoccupations

pations of the Government—that, and the mentality they reflect. I have already recounted the strategy of Mrs Gandhi and Co. and its lethal consequences. But the record shows more. It testifies not just to rulers pursuing narrow political advantage, not merely to bureaucrats being servile, not just to mere villainy, it testifies to perversity.

Government's Preoccupations

YOU CAN GLIMPSE from the official records what were the preoccupations of the Government—of R.V. Subrahmanian, the Principal Advisor to the Governor, and his cohorts—in mid-February, the period when the worst killings took place. Apart from completing the rituals connected with elections one way or another, the records suggest three preoccupations: keeping the body count low, ensuring the safety of and keeping in good humour the 8,000-odd officials—most of them probationers, upper division clerks and lower division clerks—who had been brought to Assam for election duty; and catering to visitors.

On each occasion that news about the killings reached Gauhati, the principal preoccupation of the State administration was to try and minimise the body count. Their analysis too was always the same: a tragedy has occurred, but such things happen when history is being made. And so was their policy decision: a new resolve to take all necessary measures to prevent recurrence of the aforesaid unfortunate incident. Nellie was no different.

By 19 February, sufficient information had reached Gauhati for everyone to have realised that a terrible massacre had taken place. A television crew that happened to be in the area had filmed it live. To the knowledge of the Government Shekhar Gupta of *Indian Express* had returned with photographs. He had personally counted 253 bodies and he estimated that about 500 had been killed. A junior officer of the intelligence branch stationed nearby had visited the place and he too had informed Gauhati that 'many more than 500' had been butchered.

Accordingly, the message that the IB in Delhi received from its office in Gauhati reported that around 750 had been killed. The IB conveyed the information to the PM's office, the cabinet secretariat as well as to P.P. Nayyar, special secretary (Home), who was looking after north-east affairs. Nayyar was soon on the phone to Ramesh

Chandra, chief secretary, Assam. Their mutual anxiety was to keep the body count down. After all, there was the third round of polling to be gone through the next day. They were keen to make doubly sure that no one should be able to conclude that conditions for a free and fair poll no longer existed.

Ramesh Chandra had little difficulty in satisfying Nayyar that the local IB personnel were, as usual, taking an alarmist view: only 35 to 38 had died in a 'group clash', and 'the situation was fully in control', he stated. The State Government maintained that they had already deputed two officers—one of them an IG of police—and that their assessment was based on an on-the-spot investigation by these officers.

Late at night the State Government had conceded 98. The next afternoon when a senior officer briefed the press informally, he insisted that the deaths were around 250. He berated pressmen for exaggerating the figure. By this time it was well known to the administration in Gauhati that 497 autopsies had already been completed.

The final count—going strictly by the police records—of this single massacre was 1,383. The Government got this figure in an official report on 5 March 1983. It hid it from the public for two months and acknowledged it only when its hand was eventually forced by disclosures.

Apart from going through the rituals of elections the other preoccupation was to protect and keep in good humour the *purohits* without whom the rituals could not be gone through: the 8,000-odd civil servants who had been brought from Delhi, Bihar, Dehra Dun, etc. Protecting them and keeping them happy took many forms. By the time polling began on 14 February, the aspect that took the maximum time and energy of the senior officers was the plan to evacuate and transport the polling staff once the polling was over. From Gauhati they must be transported swiftly in chartered aircraft. An incredible amount of time of the senior officials was taken up in finalising these plans for evacuation and transport. The 'secret' notes on this are just too lengthy to reproduce. Running into seven pages at a time, they testify to the extremely disturbed conditions which had followed upon the farce of elections. The notes lay down how the personnel must be sequestered, how movement by road must be avoided, how shuttle air services from district towns to Gauhati must be organised.

The third preoccupation in this regard was as bizarre as can be. It was receiving and distributing fruit-bread packets to the 8,000-odd

officials who had come on poll duty from outside the State. Indeed, if you go by the files and the 'crash' telex messages, this had become a matter of grave importance between the Central Government and the State administration. On 16 February—a day quite in the middle of the worst killings in the history of independent India—Ramesh Chandra, the chief secretary, had despatched a page-long telex to P.P. Nayyar about these packets:

(FROM) ASSAM DISPUR

(TO) HOME NEW DELHI

NO. PLA. 1/83 DATED 16TH FEBRUARY 1983(.)

FOR SHRI P.P. NAYYAR SPECIAL SECRETARY FROM RAMESH CHANDRA CHIEF SECRETARY ASSAM(.) FOLLOWING IS THE POSITION RELATING TO THE RECEIPT AND DISBURSEMENT OF FRUIT BREAD PACKETS(.) ON 11.2.83—14000 FRUIT BREAD PACKETS RECEIVED(.) OUT OF THIS 10500 PACKETS SENT TO DARRANG WITH THE SPECIAL CONVOY(.) 2000 PACKETS KEPT FOR POLLING PARTY GOING IN CONVOY(.) REMAINING 3500 DISTRIBUTED TO POLLING PERSONNEL WHO ARRIVED IN KAMRUP DISTRICT(.) PARA(.) ON 14.2.83 281 CARDBOARD PACKETS CONTAINING MODERN BAKERY BREAD 60 GUNNY BAGS CONTAINING NAMKIN AND SWEET BOXES WERE RECEIVED(.) OUT OF 281 CARDBOARD PACKETS 160 PACKETS DESPATCHED TO TEZPUR(.) 42 PACKETS GIVEN TO DIBRUGARH(.) 22 PACKETS TO LILABARI AND 20 PACKETS GIVEN TO KAMRUP(.) THE GUNNY BAGS DESPATCHED AS FOLLOWS(.) 10 BAGS TO DC KAMRUP(.) 25 BAGS TO DIBRUGARH(.) 15 to TEZPUR(.) 10 TO NORTH LAKHIMPUR(.) FOR THE POLLING PERSONNEL ON 20.3.83 SIMILAR FRUIT BREAD PACKETS OF 3 TONNES ARE REQUIRED(.) THEY SHOULD BE FLOWN ON 17.2.83 TO ENABLE DISTRIBUTION(.) WE ARE THANKFUL TO THE GOVERNMENT OF INDIA AND MODERN BAKERIES FOR THE SUPPLY AND ARRANGEMENTS IN THIS REGARD(.)

Two days later a second 'crash' telex, this one from the Planning and Development Commissioner J.K. Bagchi, was sent on the same subject to the Home Ministry in Delhi. It turned out that in addition to what the chief secretary had so laboriously enumerated, 45 packets of bread and 42 packets of *namkin* had also been received and dutifully despatched:

CRASH/TELEX

18.2.83

TO HOME MINISTRY NEW DELHI

FROM SHRI BAGCHI, DEVELOPMENT COMMISSIONER DISPUR

NO AE/JK/MISC/1 DATED 18.2.83(.) REFER OUR MESSAGE NO 11011 104/82-NE IV DATED 12.2.83(.) KINDLY REFER THE MESSAGE FROM CHIEF SECRETARY ASSAM REGARDING RECEIPT AND DESPATCH OF FRUIT PACKETS ON 11.2.83 AND 14.2.83(.) WE ALSO RECEIVED FORTY FIVE PACKETS OF BREAD AND FORTY TWO PACKETS OF NAMKIN ON 17.2.83(.) THESE ARE BEING DISTRIBUTED TO VARIOUS DISTRICTS(.) WE HAVE ALSO RECEIVED MESSAGE THAT THREE TONNES OF FOODSTUFF ARE COMING BY FLIGHT ON 18.2.83(.) THIS WILL ALSO BE DISTRIBUTED TO VARIOUS DISTRICTS(.)

Such were the preoccupations of the State administration on 18 February, by coincidence the very day on which 1,383 were killed in and around Nellie. Or, is it that I am missing the point and are 'fruit bread' and 'namkin' in fact code words for something else?

The fourth preoccupation was no less bizarre: what souvenirs should be given to the 8,000-odd officials? I can do no better than reproduce two notes from the Government files on the subject and one telex message sent to Calcutta. Notice that on these days when the State was on fire, the matter received the thoughtful consideration of not just the Planning and Development Commissioner of the State but also of the Chief Electoral Officer, S.R. Khosla, the Financial Commissioner of the State, as well as of R.V. Subrahmanian, the Principal Advisor to the Governor, and of the Governor himself.

Here is the first note:

For the central govt. employees who have performed a commendable job in assisting us during the elections, it was decided that a small memento should be presented to them as a token of our appreciation. The matter was discussed with chief electoral officer and it was felt that we should arrange items not exceeding Rs. 35 (thirty five) each. There are nearly 8,000 polling personnel who have come to the state for election duties including the staff from Bihar. In addition, we should also give similar presents to some of the security personnel etc., on a selective basis. It is, therefore, suggested that we should order 10,000 pieces to be manufactured and delivered positively before 20th February 1983. I have talked with the trade advisor, Calcutta, and he

will be extending all necessary help. In order to get such large number of items, an officer will be flown to Calcutta either today or tomorrow to tie up the arrangements and the officer will stay there for 2-3 days for this purpose. C.E.O. may like to approve an expenditure of Rs 3.50 lakh (10,000x35) for this purpose.

Sd/- J.K. Bagchi 15/2/83

Planning and Development Commissioner

Shri S.L. Khosla

C.E.O. may kindly approve.

Sd/S.L. Khosla

15/2/

Adviser (RVS), I/C finance dept.

Approved. I have mentioned this to the Governor also. This may be shown to F.C. for information and record.

Sd/-R.V. Subrahmanian,

15/2/83

The second note is dated 16 February:

Subsequent to this, secretary Shri A.P. Singh had brought some samples and a small group consisting of myself, secretary, industries, commissioner of taxes, secretary P and CD selected some items which were approved by C.S. on 15.2.83 also. Mr Safikul Choudhary of commissioner of taxes office has gone to Calcutta with the selected sample and he, in consultation with Assam House officials, will arrange to procure as many items as possible within next 2-3 days, keeping in mind price, quality and uniformity considerations in mind. Locally these articles were not found available to meet such a great demand. Subsequently adviser (SS) rang up and mentioned that some pieces are also being arranged locally by secretary, industries through AGMC which will supplement the availability and meet shortfall likely to arise due to such heavy demand in such a short time. Financial commissioner/election deptt. may kindly see the note and issue concurrence on a priority basis. This has a reference to my discussion with F.C. today.

(J.K. Bagchi),

16/2/83

P & D commissioner

And here is the third, a telex message:

TO TRADE ADVISER
ASSAM HOUSE
CALCUTTA
FROM SHRI BAGCHI
PLANNING AND DEVELOPMENT COMMISSIONER DISPUR
NQ AE/JK/MISC/1 DATED 17.2.83(,)

KINDLY REFER TO MY TELEPHONIC TALK WITH SHRI CHOUDHARY JT COMMISSIONER OF TAXES AND SHRI HAZARIKA OF ASSAM HOUSE CALCUTTA TODAY STOP IT SEEMS THAT IT WILL NOT BE POSSIBLE TO GET MEMENTO PIECES AT SHORT NOTICE FROM CALCUTTA STOP YOU MAY THEREFORE LIKE TO PURCHASE GIFT PIECES KEEPING IN MIND THE QUALITY PRICE AND DURABILITY OF THE ARTICLES STOP AS DISCUSSED YOU MAY GO AHEAD TO PURCHASE ABOUT SEVEN THOUSAND PIECES THE COST OF EACH ITEM NOT EXCEEDING RUPEES THIRTY FIVE ON AVERAGE INCLUDING FREIGHT CHARGES STOP THE FIRST CONSIGNMENT MAY BE SENT POSITIVELY BY 19.2.83 STOP SANCTION FOR THE AMOUNT IS BEING PROCESSED AND WILL BE INTIMATED TO YOU SHORTLY.

Pursuant to the decision, as they say, S. Choudhary, Joint Commissioner of Taxes, was despatched to Calcutta. He returned on 20 February, two days after Nellie, with 7,096 'pieces of souvenirs'.

Art Paper

WE WOULD BE wrong to think that this is as far as things could possibly go. The State administration was further preoccupied with what kind of certificates should be given to the 8,000 officers upon completion of their tour of duty. The certificates had become a matter of great concern to R.V. Subrahmanian. He had dilated at length in meetings on the quality of paper on which the certificates were to be printed and the particular typeface that had to be used, on the text, on whose signatures they should carry, where they should be printed, etc. The 'crash' message received on 20 February, two days after the Nellie massacre, by the Trade Advisor and Director of Movement, Government of Assam, in Calcutta, will acquaint you with the flavour of high-level deliberations and decisions on the matter.

TO TRADE ADVISER
 ASSAM HOUSE
 CALCUTTA
 FROM SHRI J.K. BAGCHI
 PLANNING AND DEVELOPMENT COMMISSIONER, DISPUR

NO AE/JK/MISC/1 DATED 20.2.83 STOP ATTENTION SHRI HAZARIKA STOP WE HAD EARLIER DISCUSSED ABOUT A CERTIFICATE TO BE GIVEN TO THE CENTRAL GOVT EMPLOYEES WHO HAVE RENDERED SERVICE DURING THE GENERAL ELECTION 1983 STOP KINDLY PRINT TEN THOUSAND CERTIFICATES IN ART PAPER STOP THE CERTIFICATE WOULD BE SIGNED BY CHIEF SECRETARY AND HIS NAME DESIGNATION AND FACSIMILE OF HIS SIGNATURE MAY BE PRINTED WITH EMBOSMENT OF THE GOVT OF ASSAM ON THE TOP STOP THE CONTENTS OF THE CERTIFICATES WOULD BE AS UNDER STOP INVERTED COMMA START THE GOVT OF ASSAM WISH TO PLACE ON RECORD THEIR DEEP SENSE OF APPRECIATION FOR THE EXEMPLARY AND DEDICATED SERVICE RENDERED BY SHRI/SMT DURING HIS/HER ASSIGNMENT TO THE STATE FOR SPECIAL DUTIES IN CONNECTION WITH THE CONDUCT OF GENERAL ELECTION 1983 INVERTED COMMA CLOSED STOP PARA THE NAMES MAY BE KEPT BLANK AND THIS WILL BE FILLED UP BY THIS OFFICE IN DUE COURSE AND SENT TO THE CONCERNED OFFICER AT DELHI STOP PLEASE CONFIRM ACTION TAKEN STOP FUNDS REQUIRED FOR THIS PURPOSE WILL BE PLACED AT YOUR DISPOSAL IN DUE COURSE STOP THE REQUIREMENTS MAY KINDLY BE INDICATED.

The arrangements for printing, delivery, etc. were still being finalised on 28 February, the day after the new Government had been sworn in, when R.V. Subrahmanian left Gauhati. The matter continued to be of great concern to him to the end. But I cannot pursue it any more as there are yet the visitors to attend to. Handling them was the final, and in many ways the most important, preoccupation of the State administration.

P.C. Sethi, the Home Minister, flew in from Delhi on 20 February for an 'on-the-spot study of the Nellie tragedy'. Obviously out of sorrow at having been put to such a long flight, he was least interested in the details. He flew by helicopter to Moiribari from where he was to drive in a convoy of vehicles to Nellie. But at Moiribari a local Congress-I candidate (since a minister) met him: 'Everyone has been to Nellie,' he told Sethi. 'Come to Nagbandha.' Nagbandha or Nellie, it was all the

same to Sethi. They drove to Nagbandha in the comfort to which our ministers are accustomed. Thirty-seven bodies were strewn around. Sethi had a distant, vacant look, and seemed much relieved when he was told that a message had just come in from Gauhati to the effect that Mrs Gandhi wanted him to speak to her on the telephone. That was all he needed. Sethi went straight back to the car...thence to the helicopter...thence to Gauhati...telephone from Gauhati to Delhi...And soon enough, off by the plane to Delhi. No officer in Gauhati had taken his visit seriously. But by now it was known that Mrs Gandhi herself would be visiting Nellie the next day. R.V. Subrahmanian was visibly on edge, nervous.

Mrs Gandhi arrives on 21 February... Lands at Tezpur around 9.30 a.m.... Visit to Gohpur... Lands at helipad near Jagiroad, about eight km from Nellie, around 1 p.m. Convoy of vehicles to Nellie... A stop on the highway near Nellie to meet the survivors... Accounts of woe from widows and children... Mrs Gandhi is moved... Photographs... Back into the vehicles... Five km more on the highway... A detour over a dirt road off the main highway to visit the village Muladhari... Several vehicles trailing the PM's vehicle... Mrs Gandhi's vehicle stops near a few huts much before Muladhari... She gets down... Officials and pressmen crowd around her... Dust from the vehicles, some of which have still not come to a stop... Mrs Gandhi: '*Saari dhool hamare upar hi parti hai*' (all the dust is always cast on me)'... A signal for all to return... Muladhari left unvisited... Helicopter to Gauhati... A swift, brief meeting with the senior officers at the airport itself... A great tragedy has occurred, the task now is relief and rehabilitation of the survivors, and I am confident that the officers in Assam will carry out this task with the same exemplary efficiency with which they have conducted the elections... Some perfunctory discussion on relief measures and the post-election situation... Plane to Delhi... The officers present could scarcely believe their ears. R.V. Subrahmanian could scarcely believe his luck. Five weeks after her visit to the area Mrs Gandhi was to let it be known that this year she would not be celebrating Holi because of the tragedies in Assam. Of course, in between there had been those 17-course dinners of the Non-Aligned Summit. She hadn't skipped one of them, but that was just two weeks after her visit to the Nellie area. After all, it does take at least a month for these horrors to sink in.

April 1983

CHAPTER X

Can Democracy Survive such 'Elections'?

IN A SENSE, the Assam elections constitute a vindication of Mrs Gandhi's divide-and-win electoral strategy. In the 1978 Assembly Mrs Gandhi's party originally had nine members. By events and devices that are familiar, this number had increased to about 50 by early 1982. After the elections Mrs Gandhi has 91 of the 109 seats for which elections have been completed: i.e., she now has over 80 per cent of the seats.

But while Mrs Gandhi has won a major victory, the democratic process has suffered a terrible blow.

Never since independence—indeed, never since elections as we know them were introduced in India—have the electoral laws been perverted the way they were in Assam, never has the Election Commission—the one institution on whose independence so much depends—lent itself to such misuse as it did in the case of these elections. The electoral rolls that were used were grossly and admittedly defective; the prerequisites for a free and fair poll were totally absent; the actual polling was a farce.

The evidence on each of these aspects is so overwhelming that its cumulative impact, I venture to suggest, is to leave one even more aghast than do the facts about an individual massacre like Nellie.

And the lesson the evidence points to is clear and urgent: if the Assam elections survive, democracy cannot.

The legitimacy of the elections hinges on three alibis that have been repeatedly put forward: (a) there was a 'constitutional compulsion' and so the Election Commission and the Government just had to go through with the elections; (b) while it is the clear intention of the laws that electoral rolls be revised every year and in particular before a general election to the Lok Sabha or an Assembly, there just was no time to revise the rolls in Assam; and (c) the Election Commission and others had made the arrangements necessary for a free and fair poll.

It is important to examine each of these alibis in detail as the Assam elections, if they survive, will become a precedent. 'What is done once,' the judges teach us, 'if allowed, may be done again, and in a lesser crisis and in less serious circumstances.' And once, as you shall see, the Assam 'elections' become a precedent, elections as we know them will disappear.

Two Points, Five Provisions

TWO CARDINAL points and five specific provisions of law are germane to each separate element of the discussion and should be kept in mind throughout.

First, the crux of the decision that the Government had taken was not that elections should be held in Assam but that elections should be held in Assam *without revising the electoral rolls*. It is this decision which was central to the electoral strategy of Mrs Gandhi and her party and it was this decision—not the decision to hold elections *per se* but to hold them *without revising the rolls*—which enraged the people of Assam.

Second, it is manifest that the constitutional requirement about elections is not that the rituals of elections be gone through but that the elections be free and fair.

Next, recall five straightforward provisions of our Constitution and our electoral laws.

First, by Article 172(1) of the Constitution, an Assembly can exist for a maximum of five years from the date of its first meeting 'and no longer'. Assam had had its last general elections on 25 February 1978. The Assembly that had been elected then held its first meeting on 21 March 1978. Therefore, even if it had continued, it would have

come to the end of its existence by 21 March 1983, and a new Assembly would have had to be elected by then.

Second, by Article 356, a State can be under President's Rule for only one year. After the second Congress-I ministry had fallen within two months of being formed, the Assam Assembly had been dissolved and the State put under President's Rule on 19 March 1982. Thus this too had to end by 19 March 1983, and a new Assembly had to be elected by then.

Third, Article 326 of the Constitution, Section 16(i)(a) of the Representation of the People Act, 1950, Section 62(2) of the Representation of the People Act, 1951, all lay down that only citizens of India can be on our electoral rolls.

Fourth, apart from providing for special revisions of the electoral rolls that the Election Commission may order, Section 21 of the Representation of the People Act, 1950, prescribes that the electoral rolls must be revised before every general election to either the Lok Sabha or a State Assembly. Rule 25 of the Registration of Electors Rules, 1960, prescribes that the rolls must be revised annually; it envisages either a summary revision (in which the previous roll may, for instance, be used as the draft roll and objections to or claims for inclusion may be invited) or an intensive revision (in which the task is undertaken through house-to-house visits by enumerators). Normally, summary revision takes about six weeks and an intensive revision about four to six months. Section 21 permits the Commission in exceptional circumstances to waive the revision for reasons it is to record in writing. This provision is clearly meant to be invoked rarely. It is clearly not meant to constitute the alibi for not revising the rolls year after year, for that would strike at the very heart of free and fair elections as envisaged by the Constitution. (The Registration of Electors Rules, 1960, admit of no exception at all and do not, therefore, provide even this ghost of an alibi.)

Fifth, by Article 324 of the Constitution, all matters concerning the superintendence, direction and control of elections are vested exclusively with the Election Commission. The Constitution has accordingly made several provisions to ensure the independence of the Commission. Thus, for instance, once appointed, the Chief Election Commissioner cannot be removed from office except by the same stringent procedure as applies to a judge of the Supreme Court.

The courts have repeatedly emphasised both that the Election

Commission has absolute control over the elections and that it alone has control over them. They have held that 'the purpose behind Part XV of the Constitution [the part that deals with elections] is that the conduct of elections should be left unhindered in the hands of the Election Commission'; that, while under Article 327 the Parliament can pass laws about the conduct of elections even, it cannot pass any law that would limit the executive authority made available to the Election Commission by Article 324; not just that, they say, 'There is also no provision in any article of the Constitution as to the manner in which the Election Commission would exercise its authority under Article 324. It is a matter of internal arrangement over which the Election Tribunal has full competence and control'; that after the President issues a notification ordering an election, 'the entire electoral process is in the charge of the Election Commission and the Commission is exclusively responsible for the conduct of the election without reference to any outside agency'; they have characterised Article 324 as a 'plenary provision'—i.e. as an absolute, overriding provision—'vesting the whole responsibility for national and state elections [in the Commission] and therefore the necessary powers to discharge that function'.

This overriding power, they have held, is limited only by its purpose—that is, it must be exercised to actually ensure free and fair elections—and should the Commission use it *mala fide* to in fact defeat the purpose, its decisions will be reviewable by the courts. Save for this *ex post facto* review the power of the Commission exercised to further the purposes of our electoral laws and the Constitution is unhindered and exclusive, it is a 'plenary' power.

Keep the two points and these specific provisions in mind as we take up each alibi of the Government and the Election Commission

'Constitutional Compulsion'

THE FIRST ALIBI is the most transparent of all. The Government and the Election Commission have been repeating *ad nauseum* that they were bound by a 'constitutional compulsion' and therefore had no option but to go through with the elections, come what may. Unfortunately, the very fact that the constitutional compulsion exists and was evident for long is what makes the conduct of the Govern-

ment and the Election Commission all the more unpardonable. The 'constitutional compulsion' argument works in a direction opposite to what the Commission and the Government would have us believe.

First, the fact that in the normal course the life of the Assembly would come to an end by 21 March 1983, was known for *five* years and that President's Rule would, in the normal course, end by 19 March 1983, was known from the day it was imposed, i.e. for a full year. The very fact that there were these constitutional compulsions should have alerted the Commission and the Government well in time to revise the rolls and take the steps necessary for a free and fair poll.

Second, in the extraordinary situation arising from the Government's decision to ram through the elections without revising the rolls, Article 356 of the Constitution gave a clear way out. Under the article, an emergency can be proclaimed in a part of the country. As the abnormal situation had arisen because of the non-revision of rolls and because of the total suppression of all civil liberties in Assam for three long years, the Government, if it was at all serious about the matter, while formally proclaiming an emergency in Assam, could have simultaneously initiated steps to revise the rolls and restore civil liberties. Proclamation of an emergency would have enabled the election to be postponed and the other two steps would at once have helped defuse the situation. The Government which, God knows, has not been averse to using emergency provisions of the Constitution, did nothing of the kind.

Third, the Government's alibi that it would have amended the Constitution to extend President's Rule in Assam but could not do so as it did not have the requisite majority in the Rajya Sabha does not hold either. The leaders of the opposition parties—of the Janata Party, BJP, Lok Dal as well as the AIADMK—have testified in Parliament and outside in speeches and in writing, that each of them had assured the Government that his party would support the necessary amendment to the Constitution.

Finally, and this is by far the most important point, the 'constitutional compulsion' is for a free and fair election and not for the farce of an election that has been staged in Assam. There are several ingredients of a free and fair poll. Two are of special relevance in the present case: the electoral roll must be in conformity with the laws, and the arrangements necessary for a free and fair poll must have been made.

I shall first take up the question of electoral rolls—for, remember,

the crucial decision of the Government was not that the elections be held but that they be held *without revising the electoral rolls*.

The Second Alibi

'IN FACT,' R.K. Trivedi, the Chief Election Commissioner, told the Government in his note of 17 February 1983, 'the Commission was prepared to undertake the revision of electoral rolls in the entire state of Assam with reference to relevant qualifying date at every point of time.'

The trouble, he would have us believe, was that the time between 6 January 1983, when he says he learnt that he had to hold the elections, and mid-February, by which date the elections had to be completed was—to use the words of his order of 7 January 1983, by which he directed that the 1979 rolls should be used without being updated or revised—'utterly insufficient even for a summary revision of electoral rolls, let alone an intensive revision'. He would have us believe that 'the Commission came into the picture only on the 6th of January, 1983, when the Central Government sent a communication that it was being proposed to revoke the President's proclamation by the end of February 1983, thereby implying that the Commission should take steps to hold the elections before that date.'

Is this a credible alibi? Can it be reasonably maintained that the Election Commission was, in effect, taken by surprise on 6 January when it learnt that it must hold the elections before the end of February and that, therefore, in spite of its having been ready 'at every point of time' to revise the electoral rolls, it just couldn't do so? Or does the evidence indicate that it has been a party to prostituting the electoral laws of our country because the entire electoral strategy of the ruling party hinged on such perversions?

First, as we saw, by virtue of Article 172(I) the life of the previous Assembly was to end by 21 March 1983. Hence, there had been no room for surprise because it was known for five years that the elections would have to be held before that date.

Second, the Assembly having been dissolved and President's Rule having been imposed by Article 356, on 19 March 1982, this had to come to an end by 19 March 1983, and a new Assembly had to be elected by then. There had thus been for a year no room for surprise.

Third, there was statement after statement of the Central Government as well as the state administration that should have alerted the Commission. Here are half a dozen examples:

19 March 1982: The Assembly is dissolved; within days, Zail Singh, the then Home Minister, tells Parliament that the elections will be held by March 1983.

14 April 1982: Zail Singh says again that elections in Assam will be held within a year.

30 April 1982: N.R. Laskar, Minister of State for Home, informs the Lok Sabha that elections in Assam will be held within the next nine or 10 months.

6 May 1982: Laskar reminds the Rajya Sabha during the debate on the Assam State Legislature (Delegation of Powers) Bill, 1982, that President's Rule cannot be extended beyond a year and so arrangements have to be made for holding elections during the course of the year.

29 May 1982: In Silchar, Laskar again declares that 'elections in Assam will be held without further delay in the best interests of democracy and all round development of the state through an elected government'.

28 July 1982: The Governor of Assam states unequivocally that an emergency will not be imposed in Assam to postpone elections, that the elections would definitely be held before March 1983.

9 August 1982: R. Venkataraman, the then Home Minister, says categorically that the Government is determined to hold elections in Assam before 18 March 1983. And so on.

And yet the Election Commission would have us believe that it was surprised on 6 January 1983.

Nor were these empty statements. From May 1982 the State administration began preparations for holding the polls: meetings were held with deputy commissioners for this purpose; a 16-page note was submitted to the Prime Minister in May itself setting out in detail the status of the existing rolls, the difficulties that would be encountered in holding the elections, the emerging divisions in opposition ranks that constitute the 'favourable trends', how the draft rolls should be printed, the precise time that would be required for each stage of the electoral process, the law and order situation and what kind of staff would be required, both for election duty and policing. From July

onwards, as we have already seen, detailed polling booth-wise exercises began to the knowledge of the police, the district administration as well as the Secretariat.

In August, H. Pais, then joint secretary, Ministry of Labour, was appointed Chief Electoral Officer in anticipation of the poll. He submitted his resignation from the IAS rather than take up the post. He was ultimately persuaded to withdraw his resignation and take over as Chairman of the Assam Electricity Board, as S.L. Khosla, the then Chairman (who had been financial advisor in the Petroleum Ministry at the time of the Kuo Oil deal) agreed to take charge of the elections.

Khosla was quick off the mark. On 21 September 1982—to go no further back—he submitted a detailed plan for holding the elections to R.V. Subrahmanian, the Principal Advisor to the Governor. In this he spelled out, among other things, the alternatives available for revising the rolls (I'll come to this in a moment), the additional staff and police that would be required, the training that would have to be arranged, the manner in which his own office needed to be strengthened as 'it is totally incapable of handling any work'; he explicitly talked of the prospect of holding the poll on three days. Passage after typical passage from this note shows the kind of information and premises on which the election machinery in the State was proceeding in September 1982. Here is one:

Mainly for reasons of law and order and requirement of polling personnel, in the event there is non-cooperation from the employees, it is proposed to hold the election on three days. Requirements have accordingly been indicated in the following paragraphs. Should the required force not be made available, the polling may have to be done on more than three days....It appears that the Government has decided to hold the elections before March 1983. It may take more time to receive instructions on revision of electoral rolls. We may, therefore, advantageously utilise the intervening period for printing of forms, electoral rolls, collection of materials etc. so that there are no bottlenecks subsequently. Government instructions are immediately required in this regard.

He goes on to give detailed estimates of the number of polling booths (12,204), the number of presiding officers (12,204) and polling

officers (36,612) that would be required, the number of ballot boxes (50,127) that are available, the number of them (45,799) that are in good condition and how quotations have been called for repairing the balance 4,328 ballot boxes, etc.

Does all this not indicate that a decision to go ahead with the elections had been taken well before 6 January 1983, when Trivedi was apparently surprised to learn that he had to conduct the elections?

Indeed, several passages in the note clearly indicate that the Election Commission was itself involved in the exercises. '*We have been verbally informed by the Election Commission,*' Khosla, the Chief Electoral Officer, records in para 6.6 of his note of 21 September 1982, that is, three and a half months before the date on which Trivedi is to be surprised, 'that the electoral rolls of 1979 should be treated as the current roll...' '*We have been asked by the Election Commission,*' he records in para 6.10, 'to prepare 1979 rolls polling stationwise....'

There were thus clear provisions of the Constitution which left no doubt that elections would have to be held by March 1983; there were repeated statements of the Central and State Governments that the elections would indeed be held by March 1983; from May 1982 the State Government and others (including, from September 1982, the Chief Electoral Officer) were making preparations for the elections; the facts about these preparations were known to all and sundry including, it is evident even from the written record, the Election Commission; and yet R.K. Trivedi would have us believe that the Commission 'came into the picture' only on 6 January 1983, between which date and the scheduled dates of elections there was no time to revise and rectify the rolls. Are we taken to be so completely gullible?

Law and Commitments

QUITE APART from the fact that it had been known for a long time that elections would have to be held by February/March 1983, the laws—in particular Section 21 of the Representation of the People Act, 1950 and Rule 25 of the Registration of Electors Rules, 1960—require that irrespective of elections, the rolls must be revised every year, and that they must most certainly be revised before a general election to the Lok Sabha or the Assembly.

Moreover, this time around, there was commitment after commitment of the Government as well as the Election Commission that the

names of foreigners would indeed be removed, that the rolls would indeed be revised before the election is held.

I will set out a bit of the evidence (only a bit I am afraid, as there isn't the space for more) in chronological order. As you read through, make mental notes on at least five points:

- the commitments were unambiguous;
- they had been repeated on several occasions by the Government as well as the Election Commission, inside Parliament and out, in speeches, in press conferences, in letters;
- each time the process to purge the rolls of the names of foreigners had been taken up, it had been cut short in the middle;
- the very ones who had certified that foreigners had been smuggled onto the electoral rolls in large numbers when the time came scuttled the process of removing the names of foreigners from the rolls;
- while it was sometimes the Central Government, sometimes the State Government, sometimes the Election Commission that stalled the purging of names of foreigners, the net effect has been identical: grossly defective rolls have been institutionalised.

And now for a bit of the chronology.

August 1975: The Election Commission directs that the names of foreigners be removed from the electoral rolls.

7 July 1976: By his letter number 23/1/76 marked 'Confidential', V. Nagasubramanian, Secretary, Election Commission, directs Chief Electoral Officers of nine States including Assam to remove the names of foreigners from the rolls by using Section 22 of the Representation of the People Act, 1950.

25 February 1978: Anwara Taimur wins from the Dalgaoon Assembly constituency by a margin of 9,206 votes. Within months 14,406 names have to be struck out from the electoral rolls of this constituency on the ground that the persons are foreigners and hence should not have been on the rolls in the first place. (Of course, Anwara Taimur continues to remain a member of the Assembly. In December 1980 she becomes the Chief Minister of the state. And the first thing she does is to stop all efforts to identify the foreigners).

27/28 October 1978: Speaking at a conference of chief electoral officers in Ooty, S.L. Shakdher, Chief Election Commissioner, says:

I would like to refer to the alarming situation in some states specially in North Eastern Region wherefrom disturbing reports

are coming regarding large scale inclusion of foreign nationals in the Electoral Rolls. In one case, the population in 1971 recorded an increase as high as 34.98 per cent over the 1961 figures and this increase was attributed to the influx of a very large number of persons from the neighbouring countries. The influx has become a regular feature. I think it may not be a wrong assessment to make, on the basis of the increase of 34.98 per cent between the two censuses, the increase that is likely to be recorded in the 1991 census would be more than 100 per cent over the 1961 census. In other words, a stage would be reached when the state may have to reckon with the foreign nationals who may probably constitute a sizeable percentage, if not the majority of the population of the state.

Another disturbing factor in this regard is the demand made by the political parties for the inclusion in the electoral rolls of the names of such migrants who are not Indian citizens without even questioning or properly determining their citizenship status. This is a serious state of affairs.

September 1979: An intensive revision and rectification of electoral rolls is begun. 6.16 lakh objections and claims are filed; 1.66 lakh objections are disposed of; 65 per cent of them are found to be valid. But on 10 September 1979, Shakhder, who just a year earlier had himself testified to the fact that an alarmingly large number of foreigners had been smuggled onto the rolls, decrees that in view of the very tight time schedule within which the process of enumeration and disposal of objections, etc. has to be completed, the names of persons who are already on the electoral rolls should not be omitted unless the person is dead or has changed his residence. In particular (as press note No. 88 of the Government of Assam issued from Dispur on 18 September 1979, explicitly stated), 'The Commission have instructed that no person whose name was included in the Electoral Rolls should be eliminated on the ground of citizenship as the process of establishing whether a person is a citizen or not is time consuming and will have to be gone through very carefully in accordance with law so that genuine Indian citizens are not eliminated.'

He decrees that objections against the inclusion of foreigners on the rolls should be taken up after the elections. By no provision of law is this lawful procedure. And even this promise is never kept. The

problem thus continues to worsen: between 1952 and 1970 approximately 1.1 lakh new voters were added to the rolls every year; in 1971 they increased by 6 lakh; between 1971 and March 1977 their number increased by 1.6 lakh a year; but in the next eight months 7.4 lakh are added; and in the next 18 months another 5.7 lakh join them.

11 February 1980: Through the Government of Assam the Central Government assures AASU—as it is to do on several occasions in meetings, in Parliament, from public platforms—that the names of foreigners *will* be removed from the rolls before the next elections. This particular assurance, one of the many that were given, is contained in a wireless message (No. PLA 937/80) delivered to Bhrigu Phukan, general secretary of AASU, through the sub-divisional magistrate, Sibsagar, on 11 February 1980. The message begins:

PSE PASS FOLLOWING MESSAGE TO SHRI BHRIGU PHUKAN GENERAL SECRETARY ALL ASSAM STUDENT UNION NOW AT SBR(.) FOR SHRI BHRIGU PHUKAN FROM CHIEF SECRETARY ASSAM DISPUR(.) FURTHER TO LETTER PLA 937/80 DT ELEVENTH FEB EIGHTY HANDED OVER TO YOU TODAY THE STATE GOVERNMENT HAS RECEIVED FOLLOWING FURTHER CLARIFICATION FROM CENTRAL GOVERNMENT WITH REFERENCE TO DISCUSSIONS HELD BY HOME MINISTER WITH AASU AT NEW DELHI(.) QUOTE(.) THE STATE GOVT ARE AWARE THAT THE CENTRAL GOVT HAVE INFORMED THE DELEGATION OF AASU THAT NAMES OF FOREIGN NATIONALS WILL BE REMOVED FROM THE ELECTORAL ROLLS BEFORE HOLDING ELECTION IN ASSAM TAKING EVERY CARE TO ENSURE THAT INDIAN NATIONALS ARE NOT HARASSED IN ANY MANNER...

24 December 1981: The Election Commission informs the State Government that it is anxious to fill the 12 seats for Assam in the Lok Sabha and the seven seats in the Assembly that have remained vacant since January 1980; accordingly, it asks the State Government to draw up a tentative programme to revise the rolls with 1 January 1982 as the qualifying date so that the elections may be held.

After consulting the Home Ministry the State Government tells the Commission that 'after careful consideration of all aspects, it [the Government, that is] is of the considered view that in the context of the prevailing situation in the state, revision of electoral rolls should not be undertaken at present.'

23 February 1982: The Election Commission stops pushing for a re-

vision of rolls and instead sends a tentative programme to the State Government for holding elections to the 12 Lok Sabha and 7 Assembly seats: the notification is to be issued on 31 March 1982, polling is to take place on 2 May 1982, and the process is to be completed by the declaration of results on 5 May. The State Government delays its reply by over a month. By then the Assembly has been dissolved. The Government takes the stand that the elections for the 12 seats and for the entire Assembly should be held together. It now urges the opposite of what it had urged three months earlier as the new reason for not holding the elections early: 'The electoral rolls in the state have not been revised since 1979. *It would not be advisable to have elections on the basis of these rolls.* There is no time for revision of rolls if the proposed tentative programme is to be followed.....'

May 1982: In a note to the Prime Minister the State Government (Assam is by now under President's Rule) spells out (in para 9 of the note) the three alternatives open to the Government in view of the forthcoming elections: (1) holding the election on the basis of the 1979 rolls, (2) a summary revision of the rolls, and (3) an intensive revision of the rolls. In para 13, it explains that intensive revision would require about 415 supervisors and 6,964 enumerators and that 'there may be difficulty in finding so many dependable supervisors and enumerators who will be willing to go from house to house for enumeration.' Hence, it says, 'alternative (2)—the summary revision of rolls—may be preferable.' A representative passage from the note shows the totally unsatisfactory state in which the 1979 rolls were, even two and a half years after they are said to have been finalised:

These [the draft electoral rolls] were drafted in 1979 but due to non-cooperation of the employees, they could not be properly printed. They were retained in manuscript form with whatever corrections could be made in them. The final publication was earlier done with manuscript, cyclostyled and photostat copies. It is reported that the Election Commission has accepted the certificate that the rolls which were published in 1979. It is quite likely that many rolls which were hurriedly corrected when the agitation was near its peak would not be in a condition which would enable their printing immediately. The first task would, therefore, be to prepare the rolls legibly and make fair copies of the rolls to be sent for printing....

28/29 May 1982: On three separate occasions in Shillong and Burnihat—at a press conference, in a meeting and in a formal interview

with Shekhar Gupta, the intrepid *Indian Express* correspondent—Chief Election Commissioner Shakdher makes the following points about the rolls and the elections: the rolls *will* be revised and the names of foreigners *will* be removed before the elections; the Government cannot hold elections in the State before the atmosphere is congenial and the rolls have been thoroughly revised; the Election Commission is the only agency that can decide who is and who is not on the rolls and it will do so according to the existing laws; before the elections the Election Commission will make independent inquiries to satisfy itself that conditions for a free and fair poll actually exist.

June 1982: Prafulla Mahanta, president AASUA, Ajit Kumar Sharma, MP, Rajya Sabha, H.K. Bhattacharya, ex-DIG, Assam Police, and Indrajit Barua, a leading design engineer, write to the Election Commission saying that as the Assembly has been dissolved, the elections must be just a matter of time and inquiring as to what the Commission proposes to do about the rolls. Through his official letter (No. 23/1/82/4623 dated 10 June 1982) S. Ganesan, secretary, Election Commission, assures them as follows:

The question of holding general election to the Legislative Assembly of Assam would arise only if and when it is indicated to the Commission by the Central Government that the Commission might proceed with the holding of the elections and that the Centre would revoke the President's Rule. In that event, *the commission will first have to revise the electoral rolls in the state with reference to the 1st January of the year in which the revision would be taken up and then hold the election.* The electoral rolls of 1979 would be taken up as the base and they will be published as a draft roll. *Adequate time will be given to raise objections to any entry in the electoral rolls.* As and when objections are filed on any of the grounds mentioned in the law *including the ground of want of citizenship*, they would be disposed of in accordance with the provision of the law.

As regards the question of disposal of objections and applications under Section 22 of the Representation of People Act, 1950, by the Electoral Registration officer is concerned, I am to say that *those objections seeking deletion in the electoral rolls as finally published would also be disposed of in accordance with the provisions of the law.*

29 September 1982: In the note that Khosla, Chief Electoral Officer, Assam, submits to Subrahmanian, the Principal Advisor to the Governor, he proceeds on the assumption that a summary revision of the rolls is to be done; he estimates that 7 lakh to 10 lakh objections and claims are liable to be filed and that 600 officers would be needed to dispose of them in a month.

7 January 1983: Chief Election Commissioner Trivedi orders that as 'utterly insufficient time' is left, even a summary revision cannot be done and therefore, the elections will be held on the basis of the 1979 electoral rolls.

It is self-evident, therefore, that the people of Assam have been systematically deceived. Moreover, rolls that were grossly defective even in 1979 when the process of rectifying them was peremptorily stopped, that were in a totally unsatisfactory state in 1982 to the point of being illegible in parts, have been the basis of the recent elections.

And the decision not to rectify them could not but have been taken in Delhi. It is not just that decisions even on much smaller matters are being taken in Delhi nowadays, the documents clearly show that in May 1982 the State administration had recommended at least a summary revision, that even in September 1982, the Chief Electoral Officer was proceeding on the premise that there would be a summary revision. And yet, in the end, everyone in Delhi could claim on 6 January 1983, that there was no time to rectify the rolls.

The Practical Man

THE DECISION TO ram through the elections without purging the rolls of the names of foreigners was a political one, it was the very heart of the electoral strategy of Mrs Gandhi's party. But as by Article 324 of the Constitution 'the superintendence, direction and control of the preparation of electoral rolls' is exclusively the charge of the Election Commission, to be put into effect, the decision required the cooperation of Chief Election Commissioner Trivedi.

'I have to be practical,' he told me again and again on April 29 when we met for an hour and a half. 'If I had opened the rolls for revision, 30 lakh objections would have come; there would have been no time to handle them; and I would have had to order as the Election Commission did in 1979 that the revision be stopped.'

Does it mean, I asked him twice and specifically, that the require-

ment that only citizens of India can vote in our elections is unenforceable?

'Yes,' he said twice, 'as far as Assam is concerned it is unenforceable. I have to be practical.'

Such is the view of our Chief Election Commissioner. Contrast this view, the short-circuiting of the process of correcting the rolls in September 1979 and Trivedi's order of 7 January 1983, with the sanctity that our courts have attached to electoral rolls. Here is just one representative passage from the well known 1957 judgment of the Supreme Court in *Chief Commissioner, Ajmer, v R.S. Dani*

It is of the essence of elections that proper electoral rolls should be maintained and in order that a proper electoral roll should be maintained it is necessary that after the preparation of the electoral roll opportunity should be given to the parties concerned to scrutinize whether the persons enrolled as electors possessed the requisite qualifications.

Opportunity should also be given for the revision of the electoral roll and for the adjudication of claims to be enrolled therein and entertaining objections to such enrolment. *Unless this is done, the entire obligation cast upon the authorities holding the elections is not discharged and the elections held on such imperfect electoral rolls would acquire no validity and would be liable to be challenged at the instance of the parties concerned.*

But even Trivedi could help the Government only if he could claim that he learnt that the elections had to be held so late that there was no time for revising the rolls. That is why the formal letter about holding the elections was withheld till 6 January 1983.

Imagine what would have happened if the letter had been given him a few months earlier. By Article 172, as we have seen, the elections could have been deferred till February/March 1983. An intensive revision of the rolls normally takes about four to six months; a summary revision normally takes about six weeks. If he had received that letter earlier and the elections could clearly be deferred to February/March 1983, Trivedi could not have helped by certifying, as he did on 7 January 1983, that the time was 'utterly insufficient' even for a summary revision. Hence the letter from the Government reached him only on 6 January 1983.

Such tricks may provide the security that our pliant bureaucrats

seek, but they cannot render right what is wrong. As should be apparent, the very basis of the election is bad in law and in conscience: the rolls were grossly and admittedly defective; they should have been purged of the names of non-citizens and revised; there was more than enough time to rectify and revise them; they were not rectified and revised deliberately; and ramming the elections down with the uncorrected rolls was the very heart of the electoral strategy of the Congress-I.

Next, we must consider what sort of polling took place even with such grossly defective rolls. Remember that the third alibi of the Government and the Election Commission is that the arrangements necessary for a fair and free poll had indeed been made.

Polling

EVIDENCE ABOUT the complete breakdown of the official machinery—which is what had to be used on the days of polling also—was available to all including, in particular, Khosla, the Chief Electoral Officer in Gauhati, and Trivedi, the Chief Election Commissioner in Delhi. The former was receiving, among other things, a detailed Election Situation Report three times a day. He himself visited various centres by helicopter, on occasion with an inspector general of police. He was in constant touch with Subrahmanian, the Principal Advisor, Romesh Chandra, the chief secretary, and others about the deteriorating situation. He and four other officers—two of secretary rank and two DIGS—met every day to review the information. So the election machinery cannot plead lack of information.

The breakdown of the State machinery directly resulted in the total chaos that marked the polling itself. A number of officers, probationers and others who were airlifted to Assam for election duty have been interviewed. The officers and probationers were met individually as well as in groups. The interviews lasted half an hour to one and a half hours each. It is almost impossible to convey in a short space the extent of the chaos, the flagrant violations that the officers describe. Among the things they describe are the following:

- In his note of 21 September 1982, the Chief Electoral Officer had estimated that 12,204 presiding officers and 36,612 polling officers would be needed for the 12,204 booths. (Even this was an underestimate for the Election Commission's handbook 'Instructions to

Presiding Officers' says that each booth is to have one presiding officer and four or five—not three as in Khosla's calculation—polling officers). Apart from three of Assam's 10 districts, Government employees all over the State boycotted the elections. And yet the total number whom the Government was able to airlift for election duty was only around 8,000. As a result, at several booths there was no more than one officer against the normal five to six officers—a fact that can be documented by appointment letters issued to presiding officers.

- An alarming number candidly state that they never left the place at which they had been put up and that they signed blank forms, both regarding the receipt and handing back of polling material as well as the actual conduct of polling. They say that they were asked to do so by the district administration. In several cases, they report that they did so under duress as the threat was held out to them that CRPF protection would be withdrawn and they would be left to fend for themselves.

- A number of them say that while they left the places where they were put up, they never reached the booths.

- While polling was supposed to commence at 7.30 a.m. and go on till 3.30 p.m. many who say they reached the polling booths testify that they reached late, sometimes as late as 1.30 p.m. and in many cases closed shop around 2.30 p.m.

- The locations of the polling booths were changed on the day before polling and in several cases on the day of polling itself. Three to four booths were clubbed into one. In the normal course, this is to be done well in advance of the polling date, and it can be done only with the consent of all the candidates; further, the changed location is to be widely notified in the area. Even perfunctory attempts to ensure any of this were not made.

- The officers often found that the number of voting slips they were given did not correspond to the number of voters listed for the booth—for instance, they would be given two or three bundles of 100 ballot papers each for a booth with 600 voters on the list. They do not know what use was made of the remaining.

- The 8,000 who were airlifted knew no Assamese, while the voters' lists were exclusively in Assamese. Occasionally a Home Guard or someone else was provided to assist them to decipher the lists. Often he did not turn up and, when he did, he did not or could not help them read the names. As a result there was little checking of who had come to vote.

- Officers who went to areas from which heavy polling has been reported say that they saw the same faces turn up to vote three or four times but were so terrified of being beaten up that they did nothing. They affirm that they could not register even a formal protest. Many affirm that in many areas the indelible ink mark was not put on the voters. Some say that they were explicitly told not to apply the mark.
- They testify to voters telling them that CRPF men had come into their houses and had told them to go and cast their votes. They say the CRPF brought the voters right up to the booths in vehicles that the Government had requisitioned.
- The rules and instructions regarding the conduct of elections lay down elaborate procedures for preparing the final account of the polling material, delivering it to designated officers and its storage in safe custody till the day of counting. Officers on the other hand testify to the material being taken unsealed from the polling booths, of the final accounts being prepared, not at the polling booths but in police stations, circuit houses and hostels.
- They testify to the discrepancies they discovered—for example, in the number of voters, the number of voting slips they had been issued, the number they could account for as having been used and the residue—and to their being told that all these could be reconciled by the affirmation that some of the material had been destroyed by fire and by the agitators.
- Direct evidence is available of boxes being transported from place to place and being handed over (even in one instance at Gauhati airport as the person carting them was about to emplane) to persons who had not the slightest authority to take charge of them.
- Votes ostensibly cast in constituencies are freely available to this day.

For reasons of space, it is not possible to reproduce the interviews at length. One example will suffice. It is the account of an officer in the Ministry of Finance (the names of the officer and the particular polling booths are not being mentioned at his request):

I never wanted to go. In fact, on February 7, over 2,000 of us staged a demonstration in front of the minister's office in North Block. B.B. Thapa, secretary general, Federation of Government and Public Sector Organisations, was allowed to meet Mukherjee, the minister. Thapa asked why people were being

made to go compulsorily, why couldn't the ministry just call for volunteers? Thapa went the next day to get a court order. But in the meantime a lottery had been held at the ministry at 4 p.m. and those selected were not too reluctant to go as they had been offered an extra month's salary plus one and a half times their normal daily allowance as incentive.

The seven in the Finance Ministry who refused to go are all being charge-sheeted. Thapa believes that altogether some 20 government employees have been charge-sheeted under rule 14 of the Central Civil Services Classification, Control and Appeal Rules of 1965 for refusing to do poll duty.

On February 9 we started. We flew in an Airbus along with hundreds of others, all employees of the Government of India going for election duty. The group of 91 from the Finance Ministry was put in two buses and sent from Gauhati to Changhsai. On the way, we overshot the mark and some 20 km from Gauhati we came to a CRPF camp by mistake which we thought was our destination. It turned out to be a camp where some 1,000 Assamese were being kept in a virtual jail for two weeks before polling so that they could be polling staff. The children had passes to visit their parents. Most of the Assamese were school-teachers or other government employees.

Our Finance Ministry group eventually landed at the Changhsai army unit's mess and on 12th morning we left by bus. On February 12 we reached Nalwadi. Near the police station, the buses were halted. There was a curfew on and we could hear shots in the distance. At least five corpses were brought to the police station. The government employees were terrified. We had to sleep in the bus near the police station. There was no electricity. Early in the morning on February 13 we started for Mukulmua.

At the Mukulmua school where we were put up, there were also 39 Assamese. They had turned up for interviews for 51 vacancies in some government service probably in Gauhati. As soon as they applied for the job they were informed that they had been selected and ordered to stay and wait a few days to undertake polling duty along with Assamese school teachers and government employees. The terrified Assamese said they had no choice because, if they had refused, they would have been

branded as traitors. The CRPF treated them like dogs, not allowing the Assamese even to go out of the rooms for toilet purposes as they feared they might be insurgents.

On 13th night a deputy secretary in the Assam Secretariat, who was the returning officer for the area, arrived along with he SDM and the Scheduled Caste welfare officer. At 1 a.m. he informed the group, most of whom were UDCs and LDCs and a few SDOs, that there were to be no polling officers, that they would all be presiding officers. All of them would leave immediately in trucks. Each would have a cover of 10 CRPF men and two Home Guards. But as the roads were blocked they would have to walk 10 km to 15 km separately in the darkness. Polling was to be held on February 14. He handed over the ballot boxes and voting paraphernalia. Incidentally, he also brought to our notice the instructions asking us not to take signatures and thumb impressions on counterfoil.

The demoralised and frightened group refused to go and started protesting. He then informed them: 'It is up to you, if you want to go to your polling booths I will provide the security. But if you don't want to go then all the same you must fill out your diary and give your report.'

Except for the lone under-secretary in the group whose polling booth was the school in Mukulmua, nobody went for polling. They all sat in a room and filled out their diaries. Many put nil voting but several stuffed their boxes with Congress-I votes. There was a lot of voting in the room.

One of the section officers, Singh, was very upset and protested loudly that his conscience would not permit him to do this. The others, however, scolded him and told him, 'Are you mad? Do you want to die?' The others filled out Singh's diary for him and told him merely to sign.

Nearly all in the group were not gazetted officers. They were given no training. They were not even aware how to open the box or of the rules and they were being told in the middle of the night to start for their polling stations.

The group was then taken to Nalbari and put up at the Marwari Dharamshala. Polling was on February 17. On February 16, after waiting in vain to meet the SDM at his office till late at night, we returned to the Dharamshala at midnight. A little later, the

SDM came with the polling material and asked all of us to be ready at 3 a.m. to proceed to our destinations with the party of 10 CRPF men and one Home Guard. The 600 Assamese from the oil refineries who were also confined at the Dharamshala were, as usual, treated like dirt by the CRPF men. Incidentally, the Assamese were more terrified than the Delhi men of moving out for polling duty.

Except in one or two cases, nearly all the Assamese listed as polling officers never showed up. Instead the presiding officers were given along with their voting materials Rs 25 as contingency fund which I think was meant in case we could hire any local polling officer. Others say the contingency fund was for purchase of matches, candles etc.

I was posted at the—polling station. The furniture at the station had been liberally sprayed with something which made one itch. One of the CRPF men got wise to this as this was a common tactic of the Assam agitators. So I and my escorts went and sat on the grass outside the school. Till 3 p.m. nobody came to vote. So I sealed the box. Just as I had finished sealing it a gentleman arrived with an escort of four policemen and insisted he wanted to vote. I and my policemen said it was not possible. I could not understand the man's insistence. It turned out that the man was an independent candidate. However, since he had only four policemen on his side and I had 12, we won the argument and told him he should have come earlier if he was so keen to vote.

The third area of polling was in Masalwadi on February 20. I submitted a nil voting report. And so did most of my companions, except for one presiding officer who was not even going to his area when a party came from the Mukulmua village demanding he come at once. They were all Muslim refugees and they wanted to vote. In fact polling was so brisk that the entire polling box got filled up. In no mood to go back and get another box, the presiding officer instead took a gunny bag and filled it with the leftover votes. Then he went back to the headquarters and put the votes in a box.

When this and similar accounts are recounted to the Election Commission—I recounted one of them in detail to the Commission—the response proceeds along three lines: 'We have received no report

to that effect'; 'You are the first one who has told me this, I will make enquiries'; 'The Chief Electoral Officer and the observers are yet to submit their reports.' The Commission has made no attempt to ascertain any of the facts from the officers and others who were sent to Assam for polling duty and who are back in Delhi, Patna, Dehra Dun, Mussoorie, etc.—indeed many of whom are in buildings within a few hundred yards of the building of the Election Commission itself.

The Third Alibi

DID THE ELECTION Commission not see that the decision to ram the elections through without revising the rolls had rent society asunder, that it had divided the people into warring camps, that the State apparatus had totally broken down, that with all this a war of all against all had broken out and that the conditions for a free and fair poll just did not exist? Did it learn nothing about what was transpiring in the polling booths? Why did it sit paralysed?

Trivedi puts forth three explanations: first, he says, he went by the assurances of the State administration that a free and fair poll could indeed be held; second, he says, it isn't that he did nothing, he did send a wireless message to Gauhati and a note to the Government; and, third, that he had no power to do anything else in the circumstances.

Once again, each of these explanations must be examined in detail, for unless they are nailed down, such alibis are certain to become precedents.

In page after page of self-serving apologia in the *Documentation Monthly*—the document they prepare in the Commission for internal circulation—and in the 17 February note it sent to the Government the Election Commission records that it was going by the assurance Trivedi had been given by Chief Electoral Officer Khosla in early January that elections could be held, by the assurance he had been again given in a meeting held on 24 January by the Chief Secretary of Assam, the Director General and Inspector General of Police and the Chief Electoral Officer of Assam that 'the poll could be held in Assam without any difficulty and that they had and would make all necessary arrangements for that purpose'; that 'though the situation in the state was not ideal for holding a general election', that although the circumstances prevailing in the State were 'extraordinary', that although the conditions in the State were 'abnormal', 'the Commission was

continuing with the process of election only on account of the assurances given by the state at various stages that they were in a position to carry out the process of election.'

'The first round of elections was over on the 14th,' Trivedi wrote to the Government on 17 February, 'in which 16 constituencies were affected [out of the 62 for which polling was scheduled for that day] on account of non-arrival of polling parties, road blocks and law and order situation. Even after this first round the state Government did not intimate that they are not in a position to continue the second and third round of polling....' And so he had no option but to let the process proceed as it would.

This won't do. The law clearly obliges the Election Commission to satisfy itself that the conditions for a free and fair poll exist, not to obtain *pro forma* assurances from others for the record. A single representative passage—this one from a famous case decided in 1971—will show how the courts have repeatedly pinpointed the responsibility as well as the powers of the Commission in this regard; contrast it with the defence Trivedi has put forward:

Under Article 324 *the Election Commission* is entrusted with the superintendence, direction and control of the conduct of elections. This implies that *the Commission* must take all necessary measures to ensure that a proper and fair poll is taken in every election and if *the Commission* becomes satisfied that on account of some circumstance that has supervened since the original date of polling was fixed, a fair poll cannot be taken on that original date, it is the overriding duty of *the Commission* to fix a fresh date for the poll.

That is the law. And Shakhder in May 1982 had said that the Commission would satisfy itself by independent inquiries that arrangements necessary for a free and fair poll had indeed been made. The facts, as we have seen, were being reported accurately and in detail, the reports were being submitted to all and sundry including the head of the election machinery in the State and yet here we have the Chief Election Commissioner asserting that as he had received an assurance from the State Government, he had to assume that conditions for a free and fair poll did indeed exist!

'But be fair, the man did not sit idle. He did write to the Govern-

ment, did he not, on 17 February 1983, that the third round of polling scheduled for 20 February should not be held?

Much has been made of this self-serving note since it was leaked to the press to raise the Election Commissioner above the level of a co-conspirator. The facts are otherwise.

A Report, a Telex Message and a Note

THE FIRST ROUND of polling, you will recall, was scheduled for 14 February. The Chief Election Commissioner could not but have been aware of the circumstances in which it was to take place—the total breakdown of law and order, the extreme difficulty of getting personnel for manning the polling booths, the haphazard manner in which 8,000 had been flown in; how, far from being trained for election duty, they did not even know the language in which the voters' lists had been printed. In any event, he sent two observers to see what transpired on the first day of polling.

They returned and reported the chaos: even the rituals could not be gone through in one-fourth of the constituencies for which polling had been scheduled on 14 February, they also gave him an account of the condition of the State machinery from the fact that the three advisers were not on speaking terms with others.

The second round of polling was scheduled for 17 February and the final round for 20 February. Re-polling in few of the constituencies was set for 21 February.

Upon receiving the report of his two observers Trivedi had K. Ganesan, the secretary of the Commission who had been one of the two observers, send the following telex message to Chief Electoral Officer Khosla in Gauhati:

MESSAGE

NO 464/AS-LA 83 DT FEBRUARY 16

FOR KHOSLA FROM GANESAN(.) THIS HAS REFERENCE TO VISIT OF DEPUTY ELECTION COMMISSIONER AND SELF(.) ON OUR REPORT THE COMMISSION DIRECTED THAT HAVING REGARD TO THE PROVISION OF SECTION 57 OF THE REPRESENTATION OF PEOPLE-ACT 1951 RELATING TO THE ADJOURNMENT OF POLL-IN EMERGENCIES CONCERNED RETURNING OFFICERS BEFORE SENDING FURTHER POLLING PARTIES FOR THE LAST

ROUND OF POLLS ON 20TH SHOULD OBTAIN SUCH INFORMATION AS IS CONSIDERED NECESSARY TO DETERMINE WHETHER POLLING SHOULD BE HELD AT ALL TAKING INTO CONSIDERATION ALL FACTORS INCLUDING THE PRESENT SITUATION RELATING TO LAW AND ORDER AND THE LOGISTICS OF COMMUNICATIONS ETC(,) IF FURTHER POLLING CAN OR CANNOT BE HELD THE REASONS SHOULD BE STATED BY THE RETURNING OFFICERS IN WRITING TO THE CHIEF ELECTORAL OFFICER AND THE CEO SHOULD MAKE HIS OWN ASSESSMENT AND CONVEY THEM TO THE COMMISSION ALONG WITH THE RECOMMENDATIONS OF THE RETURNING OFFICER CONCERNED(,) IN CASES WHERE ADJOURNMENT IS RECOMMENDED ORDERS OF THE COMMISSION SHOULD BE AWAITED(,) PLEASE ACKNOWLEDGE RECEIPT(,)

Can there be clearer evidence of the fact that the Commission had itself by now realised that the 'assurances' on which it had thus far been proceeding had fallen through and also of the fact that, while now convinced of how wrong things had gone, the Commission, instead of doing what is clearly its duty under the law, wanted someone else to assume the responsibility?

After sending the message, Trivedi talked to Khosla over the phone. Khosla confirmed receiving the message and said that he had immediately upon receiving it transmitted it to the returning officers of each area.

The next step is as curious as can be. The Election Commission says it received no reply to its message and, in spite of the urgency of the matter, in spite of Khosla being on the other end of the telephone, of the telex, it sent him no reminder.

Instead, on 17 February, it prepared an 11-page note for the Central Government! It is this note which made its way to the press.

The note is 11 pages of self-serving apologia and shows the Commission's anxiety not to do what is its clear duty under the law but to protect its position on paper.

And, as always seems to be the case in India nowadays on every life-and-death question, that isn't all. Trivedi says he instructed his office to send the note forthwith to the Government as it had to do with the last round of polling that was still three days away. The office, on the other hand, thought that it was related to a question that had to be answered in Parliament on 21 February. So, it took two days to cyc-

lost the note and despatched it only on the 19th, by which time, conveniently, it was too late to do anything about the final round of polling.

And even that note despatched on the 19th, the Government has told Parliament it did not receive till 21 February—that is, till a day after the poll was over! (It is a minor matter that the peon book of the Commission has the receipt signature for the 19th.)

There is yet another twist. It now transpires that Khosla eventually requested Trivedi that the schedule for the 20 February final round of polling be altered so that instead of going to poll on one day the constituencies could go to the polls on three days between February 20 and 28. This time it was Trivedi who refused as he feared that the violence and chaos that had followed upon the first and second rounds would get prolonged.

So, everyone's paper-work is complete: Trivedi sent his wireless message to Khosla and his note to the Government; Khosla eventually asked for deferring the poll; the Government did not receive Trivedi's note.

Dereliction

BUT WHY WAS Trivedi sending telex messages to Khosla and notes to the Government? Had he no powers to act on his own?

He says that as Section 57 of the Representation of the People Act, 1951 empowers the presiding officer in charge of a polling station or the returning officer presiding over such a place to adjourn a poll in an emergency, he took it that he and the Election Commission itself had no powers in the matter.

Even this does not explain his writing a note to the Government of all things. If only the presiding and returning officers in the field had the requisite powers, what was the point of writing to the Law and Home Ministers in Delhi? Did Trivedi think that while the Election Commission did not have the powers the Government had them?

But let us take his explanation at face value.

Contrast the premise on which he acted with what the courts have laid down again and again. We have already seen how the courts have affirmed that the entire process is under the absolute and exclusive charge of the Election Commission. Here are further propositions that

a five-judge bench of the Supreme Court affirmed in the well known case *Mohinder Singh Gill, etc. v The Chief Election Commissioner, etc.* as recently as in 1978. The court held that:

- Article 324 is a 'plenary provision', that is, it is an overriding one.
- The words used in it—'superintendence, direction and control' as well as 'conduct of all election'—are 'the broadest terms' encompassing all aspects of the conduct of elections.
- The function of ensuring free and fair polls having been assigned absolutely and exclusively to the Election Commission, all powers necessary for the performance of this function also belong to the Commission.
- In particular, Article 324 is a 'reservoir of power' and has been specifically kept unqualified precisely so that the Election Commission would have full powers to deal with extraordinary situations that may arise, situations beyond those covered by the Representation of the People Acts.

Notice what the court in this case repeatedly and unambiguously laid down on the last point, and contrast it with the view that the Chief Election Commissioner took when overwhelming evidence confronted him. In *Mohinder Singh Gill*, the court declared:

Since the conduct of all elections to the various legislative bodies and to the offices of the President and the Vice-President is vested under Article 324(1) in the Election Commission, the framers of the Constitution took care to leaving scope for exercise of residuary power by the Commission in its own right, as a creature of the Constitution, in the infinite variety of situations that may emerge from time to time in such a large democracy as ours. Every contingency could not be foreseen, or anticipated with precision. That is why there is no hedging in Article 324. The Commission may be required to cope with some situation which may not be provided for in the enacted laws and the rules. That seems to be the *raison d'être* for the opening clause in Articles 327 and 328 which leaves the exercise of powers under Article 324 operative and effective when it is reasonably called for in a vacuous area...But where these [specific enumerations of powers] are absent, and yet a situation has to be tackled, the Chief Election Commissioner has not to fold his hands and pray to God for divine inspiration to enable him to exercise his functions and to

perform his duties or to look to any external authority for the grant of powers to deal with the situation. He must lawfully exercise his power independently, in all matters relating to the conduct of elections, and see that the election process is completed properly, in a free and fair manner.

We do not find any limitation in Article 324(1) from which it can be held that where the law made under Article 327 or the relevant rules made thereunder do not provide for the mechanism of dealing with a certain extraordinary situation, the hands of the Election Commission are tied and it cannot independently decide for itself what to do in a matter relating to an election. We are clearly of opinion that the Election Commission is competent in an appropriate case to order re-poll of entire constituency where necessary. It will be an exercise of power within the ambit of its functions under article 324.

During our one-and-a-half-hour long meeting, I asked Trivedi at least twice whether he was not aware of the series of rulings on the matter. His answer was, at best, vague.

The polling was thus riddled with the most flagrant violations of the law; the Election Commission received more than enough information to alert it to what was going on; instead of doing its duty, it composed an 11-page note to the Government.

And even this note did not contain any specific recommendation to the effect that the last round of polling should not be held.

Consequences

THUS IT IS that, given the perverse determination of the rulers to push through their elections-without-revision and the pusillanimity of the Election Commission, we have had the farce of an election in Assam. A country that had for decades prostituted its citizenship laws has taken another step to disaster: it has now prostituted its electoral laws on an unprecedented scale. The immediate consequence of the 'elections' has of course been violence. And we minimise the problem by blaming the violence on 'agitators', 'anti-social elements', etc. In fact we minimise it when we see it as but the latest manifestation of 'communalism'.

The killings were the Hobbesian war of all against all. They testified

not so much to 'communalism' as to the total breakdown of governance. I have already enumerated in the previous chapter how each community that was a victim in one place was the predator in another.

The second consequence is a totally unrepresentative Assembly and Government. Even if we take the official count at face value, in one-seventh of the constituencies the election was not completed; in one-half of the constituencies in which it was completed the polling was less than 25 per cent; in a third it was less than 10 per cent; in a fifth it was less than 5 per cent.

The Dhakuakhana constituency has an electorate of 76,877; it had 111 booths; polling is said to have taken place in 17; from among these, no vote was polled in seven; in the remaining 10 booths, 650 votes were polled; the winner, Raghunath Pamegam, got 587; he is now a Deputy Minister. In Dharampur constituency 69,308 were entitled to vote; 267 votes were polled; the winner, Bhumidar Burman, got 266 (one vote being rejected); he is now the Minister of Health.

The Government is thus no more legitimate in the eyes of the people than were the governments of the Thieu and Kys in Vietnam. Its mere existence is an affront and worse to the people of Assam. Its mere existence is provocation enough for violence. For its mere existence convinces the people of Assam that they cannot get justice through customary means.

As for the Government, it is and it sees itself as completely dependent on military and paramilitary forces and on the immigrants' lobbies. In such circumstances the armed apparatus is bound to become unaccountable and the lobbies are bound to become more and more audacious. The Government will thus be led to act in ways that will further enrage the people.

Even within the civilian and police apparatus the divisions and bitterness, far from abating, are being internalised. Every group, every officer connected with the elections is passing the blame to others, every officer has been putting together papers that would show that he did his job, that the others are the ones who did not.

As befits his position and temperament, Principal Advisor Subrahmanian was the first off the bat. On 27 February 1983, a day before he was to leave Gauhati, he sent off a letter to T. Rajeshwar, the director of the Intelligence Bureau in Delhi, laying the blame on the same Special Branch of the State police that he had used so much over the past year to justify his stand. 'My dear Rajeshwar,' he wrote... 'The time I

have spent in Assam has been a period of unprecedented stress and strain. There have been many problems. *The inadequacies of the State Intelligence machinery made the situations even worse....*'. Since then everyone down the line has been following his example.

A people bitter and enraged...a Government of Thieus and Kys... officers at each other's throats....Should we not apprehend worse than we have seen?

In another sense too, the elections in Assam mark not the culmination of a process but just a milestone: should they prevail they will certainly become a precedent.

Hence it is that if the Assam elections survive, democracy cannot.

And yet it is evident that the people of Assam acting alone cannot undo the great injury that has been done to them as well as to the democratic process. India is a large country, movements howsoever broad-based in one part of the country can be ignored with impunity by our rulers. And Assam in any case is so far away from Delhi. Nellie is so distant from NAM.

For all the reasons thus—because of the grave injury that has been done, because of what this injury portends, because people in distant Assam even if united to the man cannot undo the injustice—here is a cause worthy of the entire country.

April 1983

CHAPTER XI

Secularism—Real and Counterfeit

WE ARE REGRESSING back to our religious identities—more and more of us are once again looking upon ourselves as ‘Sikhs’ or ‘Muslims’ or ‘Hindus’ rather than as Indians. Each is thus distancing himself from the other—the ‘Us’ from the ‘Them’.

Sikh fundamentalism has already taken its toll in blood. In recent months the Government has anointed Muslim fundamentalists as the sole spokesmen of Muslims. And by now so great is the resentment among Hindus that it would take a Swami Dayanand-in-arms just four or five years to inflame them as they have never been inflamed before.

Every issue today appears as a ‘Hindu v. Sikh’, a ‘Hindu v. Muslim’ issue. Whether a run-down building is a mosque or the birthplace of Lord Rama, whether a 75-year-old woman should get alimony or not, whether a procession should proceed along one route or another—none of these remains the specific, trivial question that it is. Each becomes a matter of honour, a trial of strength, a prelude to some eventual but great calamity or victory. And as the question no longer concerns the specific issue, as it is now a question of ‘who is to

prevail—Hindus or Muslims', it seems entirely natural and fully justified to employ *all* possible means to resolve it in one's favour.

The last few years show what happens once communities set off on this course :

- The malady multiplies like cancer.
- The longer a ground for separateness is allowed to persist—reservations linked to castes are an example, different personal laws for different religious groups are another—the more deeply each group comes to believe that its security, indeed its identity, consists in the external marks of separateness.
- The longer these last, the more accustomed and also more adept does each group become at exploiting these marks for wresting advantage. Soon enough, operating through these channels is the only way that the members of the group know. Every proposal to reform or integrate the laws now appears to them to be a conspiracy to deprive them of the only instrument they have of securing at least a few advantages for at least a few among themselves.
- More than the group or the community, its leaders develop an interest that is even more deeply vested in these contours. They are seldom men of religion themselves, and certainly not 'men of God', but they use religion to whip up the laity.
- Among them the extremists come to set the standard of fidelity to the cause. The moderates are forever panting to keep up with the rhetoric, the demands of the extremists. The moderates are forever telling everyone that the demands had better be conceded, and conceded *through them*, the moderates, as the alternative is to have the extremists prevail.
- Anxious to avoid hard choices, society makes-believe '*this* concession will allay the laity; it will finally give the moderates the strength they need'. In fact each concession—specially as it is made after that momentary show of 'firmness'—vindicates the extremists. It shows once again that this society will not heed you till you grab it by the scruff, but the moment you do so, it will capitulate wholesale, and will itself fabricate rationalisations for having done so.
- Pusillanimity towards one group inspires other groups. The way Mrs Gandhi dithered in dealing with Bhindranwale gave an impetus to self-styled leaders of Dalits; the new capitulation on Muslim personal law is bound to revive the Akali demand for a separate personal law for the Sikhs.

● It isn't just that capitulating to the militant communalism of one group provides the spur to other groups. The State itself then finds it that much less defensible to resist similar demands from other groups. Should the State, having caved in to the Muslim fundamentalists, later insist that it will *not* allow Sikhs to decide the personal laws under which they will live, its refusal is broadcast by the extremists as proof positive of discrimination against the Sikhs.

● Finally, each action by one group ignites reaction in other groups. The net result of the Bhindranwales is that a powerful reaction is building up throughout Hindu society. 'We won't be pushed around in our own country'—one hears that said in all corners of the country to-day.

So close are we to a precipice. And what is our response? It is to do something every day—*anything*—that will help us just get through that day. That, and to keep chanting, 'Secularism, Secularism'.

Indian Secularism

OUR LAWS DO not discriminate between citizens on grounds of religion. This is a great advance. It is one of the most precious legacies of our freedom struggle, and one of the best results of the spread of modern, liberal ideas in India.

Apart from this our secularism consists mainly in :

—chanting verses from scriptures of different religions at State functions;

—covering each issue with a syrup of cliches: 'Islam is the religion of peace', 'Islam alone assures the fullest equality and dignity to women', are the ones we have heard in the latest round;

—allowing institutions and groups of some religions what we would readily, and rightly, deny to others; we would not allow, and thank God for that, usurpers to do in a Hindu shrine what the extremists were allowed to do in the Golden Temple; we would not allow, and thank the Lord for that, the leader of a Hindu sect to exploit his followers the way we allow the Syedna to exploit and hold in thrall the Bohras;

—allowing institutions or groups that dress themselves up in religion a latitude that we readily, and rightly, deny secular institutions and groups; no governing body would be allowed to con-

done the usurpation and misuse of the premises under its charge the way the Shiromani Gurdwara Prabandhak Committee has been allowed to abet what has been done in and from the Golden Temple;

— giving 'secular' speeches while making deals with every communalist—with the Akalis in Punjab, the Shahi Imam in Delhi, with this odd Baba or that in U.P., with the Muslim League in Kerala—who controls, or is rumoured to control the vote banks;—branding others 'communal', just as for decades—to establish one's progressive credentials, it was enough—it was also necessary it would seem—to brand others 'reactionary';

—being ostentatiously anti-religion in public while practising the rituals and observing the superstitions in private. This is often accomplished by a division of labour: the man ostentatiously disregards tradition in public while his wife is put to going through the *paaths*, *havans* and *poojas* at home; he declaims rationalism in public while she shows the horoscopes in private. 'You know these women....', he says, should a visitor turn up unexpectedly.

How things have changed in the last fifty years. During the freedom struggle, if you looked upon a Muslim as being someone apart, as being someone other than just a human being like yourself, the 'progressive' was bound to brand you 'communal'. Today *unless* you look upon the Muslim as separate, that is, *unless* you see him *as a Muslim* rather than as just a human being like yourself, the 'progressive' brands you 'communal'. Fifty years ago when a Hindu scholar by his deep study perceived and wrote about 'The Essential Unity of All Religions'—the title of Bhagwan Das's famous work—that was looked upon as humanist scholarship at its best. Today when a scholar points to the identity of what is taught in the Granth Sahib and what is taught in, say, the Hindu Bhakti tradition, it is taken as proof positive of a deep conspiracy to swallow Sikhism.

There is the schizophrenia. We chant, 'Hinduism, Islam, Christianity are our common heritage.' But when a scholar proceeds in that belief—when a Hindu scholar, for instance, examines the *Hadis* with the same tools as he does the Puranas—we shout, 'Communal!'

And there are the double standards. It is progressive to demand that the Government appoints trustees to manage the Vishwanath,

Tirupati, Nathdwara, Guruvayur temples. But it is communal to demand that it does so in the case of a Gurdwara, even when the SGPC has run away from its responsibility under the law. It is progressive to denounce, say, the RSS for holding *shakhas*. But it is communal to so much as draw attention to the fact that the *official* budget of the SGPC—a body constituted under our secular laws, elections to which are held under the supervision of (and at the expense of) our secular Government—has ‘training in arms’ as one of the heads of expenditure. It is progressive to heap scorn upon ill-informed pamphlets published by some *math*. But it is communal to document the poison being spread from the Damdami Taksal. It is progressive to denounce a Hindu swami for trying to influence his followers on a secular matter. But it is rank communalism to point out that the obligation to obey *hukamnamas* and *fatwas* has no place in a secular State.

All this has roots in at least three things.

The first is our ignorance of our traditions. Far from having a knowledge of all our traditions, far from Hindus having studied the Quran, etc. rare is the Hindu who has studied—just studied, to say little of having thought over, and to say nothing at all of trying to live by—the Upanishads or even the Gita, rare the Muslim who has studied the Quran, the Sikh who has studied the Granth Sahib. The Western educated Indian has merely internalised the sophisticated slander of Western scholars about his texts, beliefs, practices. Much of this scholarship was associated with—much of it directly arose from—the need to justify the notion that the East had to be ‘civilised’ by missionary activity, by imperial conquest. We have not studied even this body of work in detail. But we *have* internalised three general notions from it: that by and large our tradition is of little worth (how often we hear it echoed, ‘The tradition is pessimistic, it is life-denying’), that our present condition—in particular, the backwardness of 20th century India—originates in this tradition; finally, that we are not one stream but an artificial geographical construct, that the Sikhs, Muslims, Hindus, etc. are inherently, irreconcilably separate.

Ignorant of the facts, we think of one another in stereotypes, we see one another through our prejudices. And we are by turn unnecessarily apologetic towards the foreigner, and unnecessarily defensive-aggressive towards our fellow countrymen.

The second reason for our schizophrenia, our double standards, is that on these issues, as on other public issues, we are not prepared to

take the trouble to go into specifics. The superficial generalisation, the angry slogan, and—our favourite—the abusive label is enough for us. Therefore, every issue naturally becomes a ‘Hindu v. Muslim’, a ‘Progressive v. Reactionary’ issue. This is all the more so because many of the ‘religious’ issues that arise—the route of the *Pankhon ka* procession and the *Ganesh Chaturthi* procession in Hyderabad and the behaviour of the processionists—have been stoked up in the first place, not because they are in any way central to the religion, but to proclaim power: the power of the group *vis-a-vis* other groups, the power of one leader *vis-à-vis* other leaders within the group. No group of citizens makes it its business to educate people to the fact that these processions have nothing to do with religion, that no text ordains processions, that they are just displays of power. Nor does any group take the trouble to chart out alternative routes the processions could take, routes that would be no less ‘sacred’ but would provide less of an occasion for the riots that follow the processionists. The processions are allowed, the killings and arson follow, year after year—and Hindu-Muslim animosity is deepened.

But the most important source of what passes for secularism today is that we just don’t want to take the steps that the situation demands. For three long years, as the killings in the Punjab proceeded, as perceptions of Hindus and Sikhs about each other were poisoned, the Government proclaimed, ‘We will not enter the Gurdwaras as we do not want to hurt the sentiments of the Sikhs.’ The outcome on Muslim personal law has been no different: ‘The community alone must decide for itself.’ But why not the country? Now, in a given situation it may or may not be expedient to act. But we should at least be clear on where the principle lies, and whether all we are doing is to dress up dithering as principle.

Modernisation and Paranoia

WHY ARE WE retreating to religious identities? Having retreated to them, why does each group feel insecure? The cause is not the other, rival religious group, but modernisation itself.

Modernisation opens up new opportunities. It also dislocates and entails hardships. As we can take advantage of the opportunities—for instance, funds and jobs flowing from the State—and as we can fortify ourselves against the dislocations most readily as groups, we rush to

persons who speak the same language, who are from the same region, who belong to the same caste or religion as us. It is around these contours that 'they' have been distinguished from 'us' the longest. Pushed around now, but also tempted by the new possibilities, we rush back to the identities that we have known the longest, identities that are therefore the most deeply ingrained.

But modernisation, even as it hurls us back to these identities, blurs these traditional contours. We may revert to the caste group to grab at the development funds reaching our region. But at the same time, and in part because of the same factors, mobility between regions as well as occupations increases; entirely new occupations which do not fit the old categories come into being; differentiations within an occupation become finer; thus, while in the old, 'unchanging' mode, one occupation differed so obviously from another, now—what with a much larger number of occupations, as well as finer gradations within an occupation—they are arranged not along a discrete hierarchy but more or less along a continuum. Thus, while on the one side we are hurled back to our caste group, the contours that demarcate this caste from others become hazier by the year.

The case of religion is no different. Faced with uncertainty, I nestle closer to my religious group. But the new opportunities and hardships throw up new questions every day that the Book, the Church, the example and words of the Teacher of a thousand years ago, are just not able to answer. The primary uncertainties into which modernisation plunges me are therefore compounded. I rush to the only group I know for security, for answers, for acting in concert, only to find that the very basis of the group is being eroded, to find that the only answers that the group and the authorities within the group know do not see me through. I am seized now not just by uncertainty but by 'the fear of freedom'.

Moreover, there are many in the group who in their own interest are spurred to, and who are well equipped to, inflame this new sense of insecurity. Over the centuries the only channels through which the members know how to act are the ones carved out by the group. The only leaders to whom they can rush for help are the leaders of this group. Even more than the laity the leaders, too, acquire an interest in these contours of separateness. Their dominance *rests upon* this identity, this self-perception of the group as being different from other groups. As the edges are blurred, as they are knocked around, these

leaders are the first to be seized by the uncertainties. They see that the very basis of their hegemony is being shaken. They project their paranoia on to the community. While what is happening is merely that *one set of demarcations* is getting hazier, while all that is happening is perhaps that one set of demarcations is being replaced by demarcations along other earth-faults, they cry, 'Islam is in danger', 'the Panth is in danger', 'Hinduism is in danger'. And the group, conditioned over the centuries to think that its essence consists in *the externals* that differentiate it from other groups—in the equivalent in the psyche of each of us of the five 'K's—believes that this indeed is so. Modernisation itself provides the 'reasons' for paranoia, the 'evidence' which 'justifies' it. With freer ways the members of the group become negligent in their observances—beards are clipped, the prayers are not said in time, the festivals become mere holidays that are spent in the purely secular pursuit of leisure. Each of us by his own volition slips into 'Western' ways. The cumulative result of these separate, individual decisions, however, appears to be—and is made out to be—that the Panth is in danger. The result flows from *our* decisions, *our* actions, but we attribute it to '*the other*', indeed to the *deliberate design* of 'the other'. Modernisation is the corrosive. But that is too abstract a notion. Paranoia needs a specific, personified devil. We therefore blame it all on the other—'the Hindu', 'the Muslim', 'the Sikh'—who is out to swallow 'my Dharma', 'my Panth', 'my Qaum'.

Again modernisation provides a 'reason' to confirm this surmise. At the best of times we are only too ready to believe that the others are out to do us in; after all, this is such a reassuring notion—it 'explains' why, in spite of our manifest virtue and our exemplary efforts, we are not more 'successful' than we are. But now, as everyone steps out of his tradition-ordained niche, as it becomes equally legitimate for anyone to pursue any activity, each in fact becomes the rival of all. Because of centuries of conditioning, each looks upon the other not as another human being—in fact, a human being who is being buffeted around by the same forces—but as 'a Hindu', 'a Musalman'. It is 'the Hindu', thus, 'the Musalman' who appears to be snatching the bread from my hands, as well as the one who is out to swallow my Panth.

All is thus set for a defensive militancy. The experience of each group in dealing with the State spurs its militancy. The State is both preoccupied and enfeebled. As a consequence it does not heed a demand so long as the group is civil. But the moment the group takes to

the streets, the moment it threatens to take to arms, the State caves in. Each round reinforces the lesson : 'Militancy pays'.

What Must Be Done ?

THUS WE ARE not up against an ephemeral rash. The problem is not just one or two madmen who have seen an opportunity in religion for advancing themselves. The problem has to do with the structure of our society and the transition to modernisation. It will accordingly be with us for decades, and the troubles it has caused us are but a preview of the havoc that, unattended, it is certain to cause. What then must be done?

Each of us is free to pursue his religion. In addition, our laws do not discriminate between individuals on grounds of religion. These are the corner-stones of a secular State. But in view of recent events, as the preceding discussion shows, we must go further. The State must be scrupulously fair. It must also be absolutely firm. When, confronted by a Bhindranwale, it flounders, it breeds terrorists. In the same way when, following the massacre of 2700 Sikhs in the capital, it does not bring the guilty to book, it breeds terrorists.

The group or institution of one religion must not be allowed to do what groups or institutions of other religions are denied. No religious group or institution must be allowed what a non-religious group or institution is denied. Fairness as well as firmness must inform the policies of the State in all matters, small as well as big. We often postpone doing the right thing for 'The Great Issue' to arise. But just as for the individual the only way to gain strength for 'The Great Issue' is to acquire it by acting on the 'small' issues as they arise, the only way for the State to keep its apparatus in order, as well as to have that reputation of being just and competent which it needs to tackle 'The Great Issue', is to tackle the 'small' issue promptly, competently and fairly. A State which does not enforce the Public Nuisances Act to regulate loud-speakers that blare from places of worship, which does not prevent religious groups from grabbing Government land, disables itself. It will not be able to act when the nemesis of this pattern of behaviour will confront it in the shape of 'The Great Issue'.

Apart from these specifics, we must move further on two general principles. First, in a secular State no religious organisation must have the authority to decree what is to be done on a secular matter. *Fatwas*,

hukumnamas and the like on matters other than religious ones have no place in a secular State. Furthermore, we must circumscribe the ambit of what is a religious matter, limiting it to purely self-regarding actions, and even among these to actions of a spiritual kind. 'But that was our personal fight,' a leader of the extremists in Punjab said recently in talking about the Bhindranwale-Nirankari killings, 'why did he [a journalist], why did the Government step in?' But killing others, even if it be from purely religious zeal, is not a self-regarding action.

'But my religion makes no distinction between the secular and the religious, between *Miri* and *Piri*,' we are told. That claim can be made on behalf of almost all religions. For instance, Hinduism no less than Islam decreed a *complete code*, a code covering all aspects of life. And this was natural. At that time there was no State as we know it today. Those who were founding the religion or organising it were also founding the State. The Prophet's case is the most obvious one. It was as natural for him to be not just the religious teacher but also the legislator as it was for a *rishi* like Manu. Moreover, as in those days of heteronomy the only sanction that man would listen to was that of God, it was as natural for the Prophet to decree the laws in the name of Allah as for Manu to decree them in the name of Brahma. When they were yet weak, Christians hearkened to the words of Jesus, 'Give unto Caesar what is Caesar's....' but soon enough Christianity became the State religion and the distinction was obscured. The *Syllabus of Errors* that Pope Pius IX put out in 1870, to cite just one of the scores of examples that come to mind, once again affirmed the overriding authority of the Church on *all* matters—secular, intellectual, spiritual, private as much as public.

Hence, it makes little sense to insist that I will heed the *fatwa*, the *hukumnama* because my religion makes no distinction between the secular and the religious. If I claim that latitude for myself, I cannot deny it to the other as my religion is not the only one which has disregarded this distinction. Now that the State is in place all must obey it, and not the text or practice of our respective religions. If the traditions or doctrines of a religion prescribe duties that are not compatible with the principles of a secular State—for instance, if our religion ordains, as Islam does, that we must either convert the one who adheres to some other religion or slay him—those duties must be jettisoned and not the principles of a secular State.

The next thing to remember, indeed to internalise, is the following: the security and prosperity of the minorities as much as of the Hindus lies, not in building fortresses around our parochial groups but in all of us joining together to ensure that the institutions of parliamentary democracy work. The individual must be the unit of account, not the group, and most certainly not the religious group. Many leaders, from Sir Syed Ahmed through Jinnah and down to the little Jinnahs of our day, have stoked the fear that, should the individual be the unit of account, the majority will swamp the minorities. But this is to attribute to the majority a cohesion that it does not possess, at least not at the beginning of the process. It is entirely possible at that stage to encourage the values which will lead members of it to see themselves as individuals, as human beings, as citizens rather than as members of a religious group. But once you start treating minorities as groups, even if this be in response to their apprehensions, you ensure a reaction, you ensure that members of the majority too will begin to see themselves as members of a religious group rather than as citizens.

Apart from the reaction it foment, treating minorities or the majority as groups has several specific drawbacks. By reinforcing group identities it polarises society. The State begins to buy peace, the politicians begin to buy votes by pandering to those who today control the groups. This affects the nature of political life, of the State itself. It results in the kinds of political chicanery and opportunism that led Congress politicians to have foreigners enrolled in the electoral lists in Assam, and, as in Assam, in the end it robs the entire State of legitimacy. In the ensuing avalanche the minorities are reduced to a state of helplessness which would never be theirs had we put our faith in the rule of law, in building institutions rather than in circumventing these to grab advantages by striking deals with this politician or that.

Moreover, the concessions that are made ostensibly to the group are gobbled up by the better-off, the better-organised within the group. These sections become the brokers. Their power in turn rests on the fact that the State deals with the group only through them. They thus acquire an interest in keeping their group backward and ignorant, in keeping it dependent on themselves. They prevent most assiduously the emergence of other leaders within the group. The manipulations of some of the 'leaders' of Harijans illustrates the point, as much as those of Jinnah. Furthermore, they acquire an interest in

fomenting in the group the feeling that it is separate, that it is being discriminated against, that it is in fact in imminent danger of being swallowed up. The end of this process is Bhindranwale.

This way of looking at things—that is, of thinking in terms of groups rather than individuals—perpetuates the tyranny of the leaders of the group on its members—of the Syedna on the Bohras—and of some sections of the group on other sections in it—of Muslim men on Muslim women, of landowning Thakurs on landless Harijans. Indeed, it gives the oppressing leaders and sections a shield. The moment anyone from outside the group speaks on behalf of the oppressed, he is denounced for ‘interfering’ in the ‘internal affairs’ of the group. ‘The community—the *sangat*, the *umma*—alone has a right to decide these matters,’ the leaders shout. But ‘the community’ is unorganised, it is powerless in the face of the leaders and usurpers within it, it is in their thrall.

The principal losers are the members of the group itself. It is that much more difficult for them to throw off the domination of the very ones whose power and prosperity depend on this backwardness. The members of the majority lose too. Even in the best of circumstances all of us distance ourselves from the victim. Look at our reaction to the morning’s news: ‘Four shot down by Punjab terrorists.’ But he was a policeman, we tell ourselves, the other was the local secretary of the Congress, and all that is in Punjab, not here. We ward off insecurity by this distancing. This is our normal reaction in ordinary circumstances. When in addition the rhetoric and actions of the group itself proclaim its members as separate from ourselves, the distancing is that much easier. Indeed, it is automatic. Potential help to those who are beleaguered in that group is cut off, of course. But the rest of us too are disabled. Having become accustomed to ignoring oppression inflicted on others, we become that much less sensitive to injustice among ourselves and are therefore that much less able to resist oppression.

The point is not to have atomised, unorganised individuals facing a leviathan in the hands of a Hitler or Stalin. There are to be limits on the collective, also, in particular on the State. The State must deal with the individual *qua* individual. It must recognise the many-facetedness of each individual who, in turn, must associate with others in *many different kinds* of organisations, each of which specialises in enabling him to develop different dimensions of his potential. In addition to recognising the individual in his many-facetedness, the collective—whether

this be in the form of a particular group or the State—must respect an inviolate sphere of autonomy of the individual. Safeguarding this sphere and enlarging it must be one of the principal objectives of each of the different kinds of associations. Religious millenarianisms invariably become as much of a rationalisation for crushing this sphere of autonomy as do the secular millenarianisms of the Hitlers and Stalins.

Religious Millenarianism

THAT THERE IS but one truth and only one way to it; that God has revealed it to 'us', 'the Chosen People', and to 'us' alone; that it is contained in our Book, and in our Book alone; that as God Himself dictated or revealed it to 'us', every word of the Book is eternally true, eternally excellent and eternally binding; that the Book itself is beyond the comprehension of most of even the believers, and *a fortiori* beyond that of the non-believers; that therefore we must heed the Church, the priest; that adherence to the faith is the overriding, peremptory duty, as is the duty of making others see this light; that as this is the only truth, as it alone will lead us to the millenium, as it will do so surely, for its own good mankind must be awakened to it; that therefore no cost is too great for holding onto it, no means are impermissible for converting others to it.

Such millenarianist claims of religions, such millenarianist beliefs in religions must be replaced by tentativeness, by openness and receptivity. For certainty is the *sine qua non* of intolerance, of bigotry, of dividing human beings into 'them' versus 'us'. Doubt is what will bring us together. It is the spur to tolerance as well as to pressing on with enquiry.

To dispel our parochial certainties we have to do two things: we have to learn, and we have to examine.

'The "new" "discoveries" and "inventions" of modern science are already contained in the Vedas'; 'All knowledge is contained in the Quran—there is nothing worth knowing which is not in it, what is not in it is not worth knowing'; 'Sikhs are and have always been different from Hindus'; 'Sikhism is closer to Islam than to Hinduism'; 'The Shariat is divinely ordained, therefore to seek to amend it is to strike at Islam'; 'Ninety per cent of the sacrifices in the independence struggle were made by the Sikhs'. Such assertions are being repeated day in and

day out, they are being internalised by frighteningly large numbers. Unless we have read and thought over the Granth Sahib, the Quran, the *hadis*, the Hindu scriptures, unless we have thorough knowledge of our history and ways of living, we cannot even begin to deal with these assertions, to say nothing of arresting the poison in them.

We must discover what is common in the scriptures, and what the irreducible differences are. Each of us, for instance, preens himself on the uniqueness, on the singular excellence of his scripture. But, to take just one instance, when we see that legend after legend, narrative after narrative, and proposition after proposition in the Quran can be traced to Jewish and Christian doctrines of the time, that the Prophet was often at pains to affirm that he was merely reminding the people of the teaching that God had already conveyed to them through the earlier prophets, we are less apt to think ourselves unique, and singularly excellent.¹

Similarly, when we study the catholic and inclusive Granth Sahib and realise that, in addition to the compositions of the Gurus, it incorporates those of sixteen Hindu mystics and Sufi saints—from Jaidev and Namdev and Parmanand and Ravidas and Mira and Surdas to Kabir and Farid—we glimpse what the spirit was that impelled the Gurus. It is on seeing that the legend of Krishna's birth—a king is warned that a child born at such and such a time will kill him, he decrees that all infants be killed; this special infant is carried across a river, and is then brought up by a poor couple—is common to so many traditions that we think less of our uniqueness and more of what the common human needs were and how different groups often came up with identical notions to meet them.

The *insistence* on uniqueness must be taken as proof of the opposite. The fact is that the more a tradition borrowed from another, the more determined it became to deny any link with it, the more hysterical became its insistence that the Book, the notions were uniquely its own, that they were the originals that it had received directly from God. How apposite is what Freud says about one of the reasons for the Christians' hostility towards the Jews:

We must not forget that all the people who now excel in the practice of anti-semitism became Christians only in relatively recent times, sometimes forced to it by bloody conversion. One might say they all are 'badly christened'; under the thin veneer

of Christianity they have remained what their ancestors were, barbarically polytheistic. They have not yet overcome their grudge against the new religion which was forced on them, and they have projected it on to the source from which Christianity came to them. The fact that the Gospels tell a story which is enacted among Jews, and in truth treats only of Jews, has facilitated such a projection. The hatred for Judaism is at bottom hatred for Christianity...²

Is this not at least a part of the explanation for the subsequent hatred of Muslims for both the Jews and the Christians?³ And if we substitute 'Muslims' or 'Sikhs' for 'Christians' in the foregoing would we not glimpse one of the reasons for the hostility of these for the Hindus in our own time? May a part of the explanation not lie in the fact that the only book that the devout Sikh is allowed to revere is saturated with accounts of Hindu deities and heroes? May a part of the explanation for the rage of the Indian Muslim not lie in the fact that deep down he realises that his *practice*—from the worship of saints to the faith in paid-for amulets to the language he speaks—is closer to the *practice* of the Hindu or the Sikh than to the teachings of Islam?

Hunting down the origins, locating the similarities, is doubly important for another reason. The ones that in their scriptures, their beliefs, their practices are tied together in such symbiotic relationships are precisely the ones that have become mortal enemies later on. Nothing punctures the claim to uniqueness, nothing puts the self-image of being 'the chosen' in perspective as much as the knowledge that in fact what we profess to be so unique and excellent about ourselves is not just shared with but is in fact derived from precisely those whom we proclaim to be the misguided, the inferior, the ones whom God has damned.

The differences must be studied as closely as the similarities. Which of them is worth breaking one another's heads over? Are they not akin to the dispute Lenin parodied, the dispute over whether the Devil is green or yellow? Would the Buddha have attached any importance to the issues over which the Hinayanists and the Mahayanists split?

We must of course go beyond studying these similarities and differences. We must study religions in relation to the great questions they set out to tackle. Is any one of them able to explain the persistence of evil and suffering in the face of an omnipotent, omniscient, all-merciful

God? Does each of them not assert that not a leaf moves but at His command, and yet also insist that the wrong an individual does originates solely from him—i.e. the individual—and he must suffer for it? Does each of them not peddle the same soporifics? If the faithful win, that is proof that God is with them. If they lose, as they so often do, it is just that God is testing their faith in Him! None of them explains why the All-powerful, All-knowing, Creator-Ruler-Destroyer should be so concerned that a few of us here on this small speck of an earth, in this one among a million galaxies, in this one corner of a universe that is millions of light years across, do or do not have faith in Him.

Apart from learning about our doctrines, we should learn about our churches and our priests. How do people become 'Swami so-and-so', 'Bhagwan so-and-so' among the Hindus? How do they become 'Baba so-and-so', and 'Sant so-and-so' among the Sikhs? All of us turn to the Shahi Imam of the Jama Masjid in Delhi. Has he acquired the honour by virtue of his piety or learning? Or is it another one of those inherited posts? How many of these religious heads owe their current post, as the Syedna does, to the decisions of sundry magistrates? Even more than the manner of ascending to or acquiring the status or post, what is their social practice? If a 'religious' head is acquiring petrol pumps from politicians in return for delivering block votes or if, like the head of the *math* in Bodh Gaya, he is into amassing real estate, should that not alter our predisposition to revere all and sundry among them? What is the mark of a man of God, the office he occupies or the service he renders? As Jesus said to his disciples (*Luke*, 27.24-7) when a dispute arose among them at the Last Supper as to which of them was to be regarded as the greatest, 'For which is the greater, one who sits at table, or one who serves? Is it not the one who sits at table? But I am among you as one who serves.'

Examine the Book

THERE WAS A time when the only way to justify a rule was to assert that it had been ordained directly by God. Thus we have Manu claiming that his statutes have been created by Brahma himself, we have Moses bringing the tablets down from the mountain, we have the Bible ascribing everything to God and His Son, we have the Prophet claiming that the Quran which was revealed to him by Allah through the angel Gabriel was a reproduction of the original which is lying in

heaven. Divine ordination was the necessary sanction. (It was not always the sufficient one as is evident from the fact that ever so often physical force, and a great deal of it, had to be used to make people adhere to the decrees.)

Now, this sanction could be enforced only by insisting that every word that had come down from Brahma, or God, or Allah was true, eternal, excellent. Hence the claims on behalf of the Bible and the Quran among the *ahl al kitab*. As invariably happens, once the respective churches were founded, what had been claimed on behalf of the Book—literal inerrancy, eternal infallibility—was soon claimed on behalf of the churches, the *ulema*, and the Pope. These claims both for the respective books and the priests survive to this day, and are at the root of intolerance and reaction, as well as of heteronomy among followers.

We must therefore examine the claims to infallibility that are made on behalf of religion and are believed by the faithful.⁴ What did the religions and the texts prophesy, and how did things turn out in fact? The world, for instance, was to have ended and the second coming was to have taken place within the lifetime of some of Jesus's companions. That this did not happen became, as Schopenhauer noted, an embarrassment even to Peter and Paul. Similarly, every statement of fact in the Books—about the cosmos, geography of the earth, history (including the history of the Books themselves), medicine—should be tabulated and set against what we know today. Several things will become clear at once. First, it will be clear that in the light of what we now know, we just cannot maintain any longer that 'every word' of the books or the traditions is literally true. The assertions about creation in the Bible and the Quran, about conception, illness, medicine in the *hadis* so patently reflect the state of knowledge at that time that even clerical scholars now say that the account of creation in the Bible, for instance, is not to be taken literally, that the words reflect not the literal truth but are just a manner of speaking.

Second, the internal evidence of the Books themselves shows that 'every word' in them just cannot be true. The Bible gives two accounts of the creation; the accounts differ. It attributes its 'books' to Moses, Isiah, etc; but on its own showing several of the events narrated in each of them took place long after—in some cases hundreds of years after—the supposed author had died. At one place (*Mark*, 2.26) David enters the house of God and eats the leaves of offering under the high priest

Abiathar. At another (I *Samuel*, 21.1, etc.) this occurs not under Abiathar but his father, Ahimelach. In one place *Matthew* (27.9) attributes a prophecy to Jeremiah and in another (11.12) to Zachariah. In the New Testament the genealogy of Jesus is given in two places—once in the Gospel according to Matthew, and once in the Gospel according to Luke. Both give the names beginning from David down to Joseph, the husband of the Virgin Mary, the mother of Jesus. On Matthew's reckoning David is followed seriatim by *twenty-five* heirs—whom he lists—before we get to Joseph. On Luke's, by *forty*. And apart from the first and the last names in the series—i.e. the names David and Joseph—our authors have *not one name* in common. It isn't that the names of who succeeded whom are common and that it is just that in a few places the order is different *Not one name in one list so much as occurs in the other*. Moreover, as Paine asked, what is the point of listing the twenty-five or the forty? Jesus, being the Son of God, and having been born to a virgin, was not in any case the son of Joseph.

One fact after another about that all-important event—the crucifixion of Jesus—is different in the different Gospels.

In *Matthew* (26.14-16), Judas promises to the priests that he will identify Jesus for them in return for the thirty pieces of silver that they actually give him, in *Mark* (14.10-11) and *Luke* (22.3) for the money they *promise* to give him. In *Luke* (22.3) Satan enters Judas at this stage itself, i.e. *before* the Last Supper. In *John* (14.27) he does so *at* the Last Supper.

Accounts of the Last Supper differ a great deal. To continue with Judas, for instance, in *Mark* and *Luke*, Jesus tells his twelve disciples in a general way that one of them will betray him, one who is at the table with him, who is eating with him and dipping bread in the same dish with him (*Mark*, 14.17-21; *Luke* 22.21). In *Matthew* he is a bit more specific but not entirely so; when like the others Judas asks him, 'Is it I, Master?' Jesus answers, 'You have said so.' (*Luke* 26.25) But in *John*, Jesus identifies Judas clearly and specifically. When the disciples ask who is it among them who will betray him, Jesus says, 'It is he to whom I shall give this morsel when I have dipped it.' And John adds, 'So when he had dipped the morsel, he gave it to Judas, the son of Simon Iscariot. (*John*, 14.21-6)

In *Mark*, *Luke* and *John* we hear no more about Judas. But in *Matthew* (27.3-5) Judas repents when he sees the result of his betrayal and

returns the silver pieces. But it is too late. And, penitent, he hangs himself.

The exchanges with Pilate too differ. *Matthew* (27.11-14) and *Mark* (15.1-5) state that after answering Pilate's question, 'Are you the King of the Jews?' with the ambiguous 'You have said so,' Jesus does not answer any further questions at all. *Luke* too reports him responding to that question in the same way, but he says nothing about Jesus answering other questions or remaining silent. On the other hand, *John* (18.33-8, 19.10-11) reports lively exchanges between the two.

In *Matthew*, *Mark* and *John* the 'trial' takes place only in the presence of Pilate. In *Luke*, however, Pilate, finding that Jesus has done no wrong, sends him to Herod, from whose jurisdiction Jesus hails and who happens to be in Jerusalem. (Herod too finds that Jesus has done no wrong and sends him back to Pilate.)

In *Matthew* (27.32), *Mark* (15.21) and *Luke* (23.26), Simon of Cyrene is compelled to carry the cross on which Jesus is to be crucified. In *John* (19.17) Jesus is made to carry it himself.

Each gives a separate account of the words that were put above Jesus's head, specifying the charge. *Mark* and *Luke* do not specify who writes them and puts them there. From *Matthew* (27.37) it seems the soldiers do so. In *John* (19.19) Pilate himself writes them out and puts them on the cross.

John tells us nothing about the attitude of the two thieves who are crucified along with Jesus, one to his left and one to his right. *Matthew* (27.44), and *Mark* (15.32) report both of them as reviling him. But in *Luke* (15.32), one thief reviles Jesus and the other one rebukes the former for doing so.

The accounts differ as much on the last words of Jesus. *Matthew* (27.46-50) and *Mark* (15.33-8) both report Jesus as crying out in a loud voice, 'My God, my God, why hast thou forsaken me?' And, after crying out once again, breathing his last. The words do not occur in *Luke* and *John* at all.

Instead *Luke* (23.34) reports Jesus as saying first, 'Father, forgive them, for they know not what they do.' Next (23.39-41), he reports one of the thieves reviling Jesus, the second rebuking the first for doing so and entreating Jesus, 'Jesus, remember me when you come in your kingly power,' and Jesus assuring him, 'Truly, I say to you, today you will be with me in Paradise.' It is after all this that *Luke* (23.44-54)

reports Jesus as crying out in a loud voice. But the words Jesus cries out are not the same as in the account given by *Matthew* and *Mark*. Instead, in *Luke* Jesus cries, 'Father, into thy hands I commit my spirit.' And with this he breathes his last.

In *John* we have nothing at all of the above. Instead, upon noticing his mother and a loved disciple, he tells Mary, 'Woman, behold your son,' and to the disciple he says, 'Behold your mother.' After this Jesus 'knowing that all was now finished', says, 'I thirst.' As in the other accounts a sponge with vinegar is put to his mouth, and, taking it, he says, 'It is finished,' bows his head and gives up the spirit.

The hour at which Jesus is eventually crucified is different in the narratives. The events that transpire in the skies and on earth are different. The accounts of the resurrection differ just as much. They differ again in regard to Jesus appearing before the disciples after his resurrection—in *Matthew* the disciples encounter him in a mountain in Galilee, in *Luke* they do so in a house in Jerusalem, in *John* in yet another setting. While in the gospels of Matthew, John and Mark, Jesus would seem to fall out of sight after the resurrection till he appears to the eleven disciples (on the mountain in Galilee or in the house in Jerusalem), according to the Gospel of Luke he travels in disguise with two of them to a village some seven and a half miles from Jerusalem and eats with them, and only then disappears from sight. He appears not to the eleven, but first to the two. And so on.⁵

Over the last three hundred years, considerations such as these have led even devout scholars to conclude that the authors were not as concerned in each instance to record what actually happened, but to recreate the overall situation in a way that would reinforce the central message of faith. They now hold that it is not 'the literal inerrancy' that we must look for in, say, the Bible, but the integrity of the overall mind-set of faith which the authors create through the dramatic situations they construct.

There is much to be said for this view, as there can be no doubt at all about the enormous impact that each of the four gospels has on the reader, non-Christian and Christian alike. The contradictions or differences in regard to specific details are as nothing when set against this impact. But, while it is entirely correct to acknowledge that the overall impact of the narrative, is what was the concern of the narrators, in urging that we focus on the overall impact rather than on the precise details, on 'the atmosphere' that the words create rather than

on the words themselves, we are clearly discarding the position that every single word of the text is the truth, the whole truth and nothing but the truth. By focusing on the overall impact than on 'the literal inerrancy' we are saying in effect that the authors of the gospels are not to be looked upon as chronologists listing what transpired but as dramatists, each concerned with making the particular event he is portraying most effective, with making the particular speech that is being delivered at that moment most evocative, without bothering about whether what he is setting down conforms to or contradicts what other dramatists have written about that scene or speech, or what in fact happened.

The next fact that stands out, however, forces us to move beyond this realisation too. Often the Books treat of the same events. Now, each is sacred. Each is said to be from God. Every word in each is said to be true, and eternally so. What is one to do then when they differ with each other in their account of the same event? A single example will have to suffice. Jesus is mentioned in 15 *Suras* of the *Quran*. Ninety-three verses deal directly with him. The annunciation of the Virgin and the birth of Jesus is differentiated at one place (*Quran*, 19.17)—an angel appears and informs the Virgin that God has decided to make a sign of her (i.e., that He has decided to perform an extraordinary thing, a miracle through her so that people realise His greatness) by having her, a virgin, bear a son who shall be perfect, etc. At other places (*Quran*, 21.9, 66.12) the two events are telescoped into one so that God is represented as both telling her and putting the child in her. Mary subsequently gives birth to Jesus near the trunk of a palm tree. (*Quran*, 19.22-34) The *Quran* informs us again and again that Jesus, while a prophet, was *not* the son of God (for instance, 3.51-5; 4.169; 5.19-21; 5.76-9; 9.30; 19.35-6; 43.57-65). In the gospels Jesus does not reveal the nature of his mission to his companions till after a long period of preparation. In the *Quran* (3.41, 19.30) he proclaims it from the cradle itself. Most important, it reports that Jesus was not crucified at all, that the man who was crucified was just a look-alike (*Quran*, 4.154-9). As Jesus was not killed, there was no occasion for subsequent events like the resurrection, etc.

The devout Christian is liable to find the 'reasons' that the *Quran* gives for concluding, for instance, that Jesus was *not* the Son of God, to be just as unconvincing as the devout Muslim is liable to find puerile the 'reasons' that one may extract from the Bible for the proposition

that he *was* the Son of God. The Quran says, for instance, that it is wrong to attribute a son to God as the latter has no consort (6.101; 112.3). But, surely, a Being who can endow a virgin with a son so as to make a sign of her so that men believe in Him, i.e. in Allah, a Being who can create the entire cosmos, including time and space, out of nothing, should be able to create a son out of nothing too. Similarly, the Quran says that it is a sin to ascribe a son to God, 'when it beseemeth not for the God of Mercy to beget a son.' (19.91-3) But why is it *seemly* for God to have prophets, apostles, messengers (on whom He lavishes extraordinary care to the point of always rushing to get them out of their personal predicaments), and *unseemly* for Him to have a son? Why is it *seemly* for God to have evil and suffering among His creations and *unseemly* to have a son among them?

Are the 'reasons' of the Quran as much as the Bible not something else altogether? The Bible must affirm that Jesus *is* the Son of God so as to exalt him to his unique position, a position so unique that a religion can be founded after him. For *exactly the same reason*, the Quran must insist that he was *not* the Son of God, for the same reason it must deny the central event of Christian martyrology, namely, that Christ was crucified: if it accepts these affirmations it cannot create for Mohammed the unique position it must, if it is to found an entire religion on the latter.

The Prophet of course did say that Jesus will come again, but it is unlikely that Christians would adopt his account of the second coming. The Prophet says that Jesus will descend once again ('soon' in one tradition, at 'the last hour' in others), that he will be 'a just judge', 'and will break crosses, kill swine, abolish the *jizya*, and leave the young she-camels so that collectors of *zakat* will not be employed for them,' that 'he will marry, have children, and remain forty-five years, after which he will die and be buried along with me in my grave. Then Jesus son of Mary and I will arise from one grave between Abu Bakr and Umar.' (*Mishkat*, 24.6) Furthermore, on the Day of Judgement, we are told, Jesus will be a witness *against* the Christians. He will testify to the grave sin they have committed by putting him and Mary at par with God.⁶

All this strikes at the very roots of the message conveyed in the New Testament. Both sets of accounts are equally revered, equally authentic. But in view of diametrically opposing assertions such as these, they

cannot both be literally and simultaneously true. And the examples can be multiplied many times over.

The Secular Approach to the Book

THE BOOK IS thus a ladder, not a fence—a scaffolding, not a prison. The believer who merely chants, 'Every word of it is true,' is forgoing the benefits that one may derive from the Book just as much as the ostentatious non-believer who just keeps shouting, 'It is all a fable.' Neither is reliving the experience that the texts enshrine, neither is letting the texts address him. We should approach the texts with an open mind, a receptive one, and instead of making the Book an object either of superstitious reverence or of exhibitionist 'taking apart', we should *appropriate it*, reading it creatively, meditating on it creatively, looking at a passage this way today and that way tomorrow.

The humanist and secular attitude to all texts can only be as follows:

- Every Book is man-made.
- Each of the books we revere has much that is valuable, but also much that is dated, and much that is just not tenable.
- Each of us has the right—and, in the poisoned air of today, the duty—to study and interpret each Book.
- Our surest guide in doing so is direct experience and not the *diktat* of some intermediary; in particular, most of us have a greater capacity to understand and interpret the texts than the professional priests and theologians, and an infinitely greater capacity to do so than the politicians who hector us in the name of religion.

Because of the nature of the Hindu tradition, because of the special position that the mystic—to whom books are nothing, and direct perception everything—has had in it, and also because of the work of the great reformers of that tradition—Vivekananda, Dayanand, Aurobindo, Gandhi and others—these propositions are well accepted in relation to the Hindu texts. The humanist and secularist must extend them to the other texts too.

It is only when we acquire this freedom in relation to a Book that we can benefit from it. It is only when we acquire this freedom in relation to all the Books that we will be enriched by what is valuable in each. It is only when we *appropriate* all the Books in this way that each Book,

instead of dividing us, will become our common heritage. It is only in this way that we will learn to, and acquire the self-confidence to, differentiate the external, the adventitious which divides us from the essential that can benefit us all.

But a word of caution is necessary. Ever so often we go about contriving 'the essential unity of all religions' by picking seemingly similar passages from the different texts. Thus a Vinoba publishes an entire book, *The Essence of the Quran*, bowdlerising all the blood-curdling cries for *Jihad*, sanitising out every verse that enjoins eternal, uncompromising hostility to the non-believers.⁷

Such selectivity, even when it is inspired by the highest motives, won't work. The faithful, after all, will read the Quran and not the well-meaning compiler's *Essence of the Quran*. And the others, were they to go by the *Essence*, would be misled as to the mind, the world-view that the text forms.

In contrast to the honey-and-syrup school of selectivity, I would urge that in reading, interpreting, appropriating the texts,

- we go by the entire text, and not by the isolated verse;
- we go by the primary text and not the commentaries;
- we go by the plain, manifest meaning of the text and the passage, and not by the convoluted construction put on it by theologians and priests;
- we go not by the effect that an isolated passage is liable to have on the believer, but on the mind-set, the world-view that is liable to result from the text as a whole; and
- finally, that we go by the entire corpus of texts and not by just this single volume or that.

It is by proceeding thus that we will, as Aurobindo would say, break out of 'ecclesiastical tyranny'. It is by acquiring this freedom towards the Book that we will break the rival millenarianist claim of the religions. Once the millenarianist claim is undermined, a religion will not be able to demand total, unreasoning obedience. And once it cannot demand *that*, it will be much less able to set us at one another's throats.

The Church and the Priest

AFTER COMPARING what the Books say about the universe, about the geography and evolution of the earth, about history in one place with what they say in another, after comparing what one sacred Book

says about the matter with what another equally sacred one says, after comparing what all of them say with what we now know about the matter, the programme of secular education should catalogue the positions that have been enunciated, indeed enforced in the name of religion by the religious establishments. A *Syllabus of Errors* to match that of Pope Pius IX should be prepared setting out what was insisted upon and enforced about the solar system from the times of Giordano Bruno, Copernicus, Galileo, what was insisted upon about the evolution of man a century ago, what is being enforced today, say on the matter of contraception, setting out assertions such as the one that it was sacrilegious to use anesthetics to alleviate the pains of the mother in childbirth—the scripture having decreed, ‘In sorrow shalt thou bring forth children’ (*Genesis*, 3.16)—while it was permissible to use them while operating on men (as the Lord Himself had put Adam into deep sleep before extracting the rib); setting out notions such as the one that there *are* witches and it is one’s bounden duty to exterminate them—the scripture having enjoined, ‘Thou shalt not suffer a witch to live’ (*Exodus*, 22.18)—and the propositions certified by the Council of Trent that original sin is transmitted through procreation, that ordination leaves an indelible mark on the soul.⁸

The catalogue must also list the considerations on account of which the custodians of religious truth have propagated, and tenaciously held onto, such notions. The position of the Vatican on contraception is a case in point. ‘It amounts to thwarting God’s will,’ say successive encyclicals and five successive Popes. Surely that can’t be the reason. After all, they have officially sanctioned surgery, including heart transplants. The reason is to be found in the authoritarian nature of the organisation; such an organisation *must keep a hand in the most intimate activities of those under its sway*, for only by making them heed it in an activity that personal can it establish the notion that is the *sine qua non* of its authority—the notion that there is no inviolate sphere of autonomy for the individual. This is the reason why successive Councils and Popes, having altered, amended, even shed so much, hold on to the archaic view on this singular matter. And then there is the ‘reason’ that they just cannot acknowledge that the Pope and the Church have erred for so long in the face of so much well-intentioned counsel to the contrary. The authority of the Church rests on the proposition that the Pope is infallible. And the reason on account of which he is infallible is that, being the successor to Peter, he is at all times being

directly guided by the Holy Spirit. With five Popes having affirmed over half a century that contraception violates 'natural law', 'the will of God', to now acknowledge that the correct position is the opposite would strike at the very basis of the claim to Papal infallibility, and hence at the very basis of the authority of the Church. The minority of the Papal Commission on birth control (the minority whose position the Pope adopted, rejecting the position arrived at by the majority of the Commission he had himself appointed) put the matter squarely:

What weighs more heavily, however, is that this change [in the Church's position on birth control] would involve a heavy blow to the doctrine of the assistance of the Holy Spirit promised the Church to lead the faithful on the right way toward their salvation... For the Church to have erred so gravely in its grave responsibility of leading souls would be seriously suggesting that the assistance of the Holy Spirit was lacking to her.

Indeed it would amount to saying that *the Holy Spirit had been guiding the enemies* of the Pope and his Church, that is Protestants and the like. As has been well put,

If contraception were declared not intrinsically evil, in honesty it would have to be that the Holy Spirit in 1930 (in reference to the encyclical, *Casti Connubii*), in 1951 (in reference to the address of Pius XII to midwives) and 1958 (in reference to his address to the Society of Haematologists), assisted the Protestant Churches, and that for half a century did not protect Pius XI, Pius XII and a large part of the Catholic hierarchy against a very grave error, one most pernicious to souls; for it would have suggested that they condemned most imprudently, under the pain of eternal punishment, thousands upon thousands of human acts which were now approved. Indeed, it can be neither denied nor ignored that these acts would be approved for the same fundamental reasons which Protestants alleged and which they [popes and bishops] condemned or at least did not approve.⁹

Saving face may be an exclusively Eastern preoccupation, but saving authority seems to be a Western concern too.

A *Syllabus of Errors* of this kind will establish that the infallibility

which cannot now be claimed for the Book can be claimed even less for the Church and the Priest, that the Book is just an aid—a ladder to be used, up to a stage, and then discarded—and that to benefit from the aid, direct experience, direct experimentation, is what is necessary, the intermediation of the Church and the Priest is not. It will teach us that each of the techniques, each of the assertions of the Books, Churches, Priests, must be examined on its merits. In no case must their veto, their embargo or their certificate be accepted without scrutiny.

Relativity

THE BOOK IS said to contain, not just truths, but eternal truths. It is on the basis of this claim that the laws it enunciates or which are derived from it, the institutions and practices it sets up or that flow from it are said to be excellent for all time. It is on this, too—and on the supplementary claim that they are the legatees of the founder and his companions—that the claim of the church, the priest, the politician-parading-as-priest to unquestioning obedience rests.

Generations of scholars have shown how institutions and laws, far from being eternal verities, are very much the products of time and circumstance. The Laws of Manu, for instance, clearly bear the impress of the distribution of power among different castes at that time. The laws and institutions of early Islam too can be seen to flow directly from the needs of a desert, in part nomadic society, of an unruly and feuding society attempting to create a State.

Several of the formulations, revelations, rules of law can in fact be traced directly to the personal circumstances of the founders and leaders of the religions. The correspondence has been often written about in the case of the Prophet. The formulations about the Jews, for instance, changed drastically during the Prophet's years in Medina. When he arrived with his small band of followers he needed the assistance of the Jewish tribes which were influential and powerful in and around Medina at that time. To this period as to the earlier period in Mecca, when the Prophet faced difficulties from all sides, we owe the revelations urging 'Thy religion to thee and to me mine.' At this period the Prophet urged that his followers adopt the Jewish holidays as their holidays, the Jewish times of prayer as their times of prayer, etc. The original direction in which the faithful had to bow while praying was fixed not as Mecca but Jerusalem. Once the Prophet's power was

consolidated in Medina, however, the nature of the revelations about the Jews and other non-believers changed abruptly. The revelations took on an increasingly intolerant character.

Other than this, many specific provisions of law also had to do with the personal and intimate predicaments of the Prophet. Thus, for instance, the rule that there must be four witnesses to 'the fact of adultery' originated in the revelation that followed the scandal about the Prophet's favourite wife, Aisha. Similarly, the modification of the earlier revelations about whether one could or could not fight in the holy month, whether one could or could not marry the wife of one's adopted son, whether one could or could not consummate the marriage before the period of *iddat* was over, all these arose directly from the exigencies of the Prophet's personal life. A single example will have to suffice. As more than one wife was allowed, there were rules by which the husband had to rotate among them. However, Allah revealed to the Prophet,

You (O Mohammad) can postpone (the turn of) whom you will of them (your wives) and you may receive any of them whom you will; and there is no blame on you if you invite one whose turn you had set aside (temporarily). (Quran, 33.51)

On hearing of the revelation, Aisha was quick to tell the Prophet 'I feel that your Lord hastens in fulfilling your wishes and desires.' Naturally, out of the great affection and regard they bore for the Prophet and also because of the awe they had for the power and wrath of Allah, Aisha and everyone else complied with this as with all other revelations concerning the great authority and privileged position of the Prophet. This was not always, however, without some heart-burning. For instance, when a companion asked Aisha what she said when Allah made the foregoing revelation to the Prophet, she replied 'I used to say to him, "If I could deny you the permission (to go to your other wives) I would not allow your favour to be bestowed on any other person."' (Sahih al-Bukhari, 60.311,312)

Several notions that go beyond mere rules of law, etc. are even more obviously utilitarian. Consider a typical account of Paradise. We are assured that the inhabitants are immortal, that they are forever young. No illness afflicts them. They 'eat and drink,' but they 'do not pass water or void excrement,' nor do they spit or suffer catarrh. Instead,

they 'belch and sweat', and this serves the purpose. The sweat however is musk. Everyone is affluent, living as they all do under 'a tent of a single hollowed pearl' which is sixty miles wide.

All have wives. These are 'large-eyed maidens', each sixty cubits tall and so delicate that 'the marrow of their shanks glimmers through the flesh.'

There are rivers there, of course, including the Nile and the Euphrates. There is also a street to which the inhabitants come every Friday. The north wind scatters fragrance on their faces and clothes, and adds to their beauty and loveliness.

There are feasts, as one would expect, beginning with the one on the day of Resurrection at which the entire earth becomes one giant piece of bread and is seasoned with fish, plus the liver of fish and ox. (*Sahih Muslim*, 6710-11, 6793-6807)

Now, are such accounts reportage? Are they not instead *compensatory prophecies*? In promising these things in such abundance on the other shore, is the author not compensating for his not being able to provide them for the faithful in the here-and-now? Are such descriptions, whether in the Quran or the Bible or the Puranas, not mere devices to use our instincts of fear and greed to lure adherents and to get them to do things that the Church needs done? Recall Plato's dictum in *The Republic* that 'cheerful views of the next world must be enforced by the State not because they (are) true, but to make soldiers more willing to die in battle.'¹⁰ Are the accounts then reportage or are they the necessary auxiliaries of the exhortations to *Jihad*?

God That is Allah

THE INFLUENCE OF time, circumstance, need can be seen not just in peripheral notions like Paradise, or in sundry provisions of law but in the central concepts too. Consider as an example the be-all and end-all of the Old Testament and the Quran, that is, God or Allah Himself. What is His central, His exclusive concern, indeed His pre-occupation? It is that we acknowledge two things—namely, that He is great, and that He alone is great.

'I am the Lord your God,' He tells us through Moses, '.... You shall have no other gods besides me. You shall not make for yourself a graven image or any likeness of anything that is in heaven above, or that is in the earth beneath, or that is in the water under the earth; for I

the Lord your God am a jealous God visiting the iniquity of the fathers upon the children to the third and fourth generation of those who hate me, but showing steadfast love to thousands of those who love me and keep my commandments....' (*Deuteronomy*, 5.6-10) The refrain recurs several times in the Old Testament. Even Jesus in The New Testament says at one point, 'Truly, I say to you, all sins will be forgiven the sons of men, and whatever blasphemies they utter; but whoever blasphemes the Holy Spirit never has forgiveness, but is guilty of an eternal sin....' (*Mark*, 3.28-30)

In the Quran this concern of God becomes a preoccupation, indeed an obsession. 'For God hath said,' we are told, 'take not to yourselves two Gods—for He is one God: Me, therefore! yea, Me revere.' 'All in the Heavens and in the Earth is His! His due unceasing service! Will ye then fear any other than God?' (*Quran*, 16.53-4)

The purpose of almost everything He does is to ensure that we recognise and acknowledge His glory, His power. Thus, for instance, He says that He creates the heavens, earth, clouds, lightning, plants, beasts and everything else as 'sings' so that we, His creatures, may see that He is All Powerful, that He alone is the creator, that He has no associates, no equals, no offspring, and as a manifestation too of His munificence so that we may partake of His creation. (2.157-60; 6-99) He rescues the Israelites from drowning so that those who are to come afterwards may know the things He can do. (10.90-2) 'I have not created djinn and men,' He declares, 'but that they should worship Me; I require not sustenance from them, neither I require that they feed Me' (51-6)—that is, Allah is self-sufficient, needing neither food nor any other kind of sustenance from us, yet He creates us; He does so for one purpose, for one purpose alone: so that He may be worshipped.

Indeed, He clearly states that nothing is of greater concern to Him than this:

O ye to whom the scriptures have been given [he declares], believe in what We have sent down confirmatory of the Scripture which is in your hands, ere We efface your features, and twist your head round backward, or curse you as We cursed the sabbath-breakers; and the command of God was carried into effect.

Verily, God will not forgive the union of other gods with Himself: But other than this He will forgive to whom He pleaseth... (4.50-5)

His punishment for your not believing in Him, and only in Him, is swift, certain, terrible, it is 'a severe chastisement'. (3.3) 'We will cast a dread into the hearts of the infidels,' He says, 'because they have joined gods with God without warranty sent down; their abode shall be the fire; and wretched shall be the mansion of the evil doers.' (3.144) 'But who so shall charge Our signs with falsehood, on them shall fall a punishment for their wicked doings.' (6.49) 'If thou didst see,' He reminds us, 'when the angels cause the infidels to die: They smite their faces and their backs.... Their state is like that of the people of the Pharaoh and of those before them who believed not in the signs of God. therefore God seized upon them in their sin.' (8.52-4; 7.170-80 similar)

He goes to the most extraordinary lengths to remind us of His power and glory. Thus, for instance, He visits afflictions on a people to humble them; next, He sends them a prophet so that they may believe in him; and when they don't believe in the prophet (and this too, it must be remembered, happens by His decree) He wreaks the most terrible vengeance on them. A single passage will suffice to give us a glimpse of His obsession in the matter and of the extraordinary lengths to which He goes to have that obsession prevail:

Nor did We ever send a Prophet to any city without afflicting its people with adversity and trouble, that haply they might humble them....

Then changed We their ill for good, until they waxed wealthy and said, 'Of old did troubles and blessings befall our fathers'. therefore did we seize upon them suddenly when they were unaware....

But if that the people of these cities had believed and feared Us, We would surely have laid open to them blessings out of the Heaven and the Earth: but they treated Our signs as lies, and We took vengeance on them for their deeds....

Were the people therefore of these cities secure that our wrath would not light upon them by night, while they were slumbering?... Were the people of those cities secure that our wrath would not light on them in broad day, while they were disporting themselves?...

Did they therefore deem themselves secure from the deep counsel [i.e., the stratagem] of God? But none deem themselves

secure from the deep counsel of God, save those who perish. Is it not proved to them who inherit this land after its ancient occupants, that if We please We can smite them for their sins, and put a seal upon their hearts, that they hearken not?...

We will tell thee the stories of these cities. Their apostles came to them with clear proofs of their mission; but they would not believe in what they had before treated as imposture— *Thus does God seal up the hearts of the unbelievers.* And we found not of their covenant in most of them; but we found most of them to be perverse. (7.92-100)

What would we say of a man whose sole concern was that we acknowledge that he is powerful, that he is excellent, that he alone is powerful, that he alone is excellent? What would we say of a man with whom this was an obsession, who incited others to kill us, burn us, torture us (for there is passage after passage exhorting that this be done) if we failed to pander to this obsession of his?

But those are exactly what Allah's concerns and commands are in the Quran. Like the God of the Old Testament, Allah deliberately creates a distinction between virtuous deeds and sin; next, He deliberately creates man in such a way that he *will* transgress, that he *will* sin; while He exhorts everyone to forgive trespasses, He insists that He will *not* forgive one trespass—and that is the failure to acknowledge that He is great, that He alone is great. We can only conclude with Schopenhauer that He deliberately creates the world to watch it suffer forever.¹¹

Clearly, this is an inadequate conception of God. Self-sufficient in all respects, why is He so concerned that this puny little man, on this puny little earth, in this puny little solar system, in this little bit of the Universe acknowledge His greatness? And even if this is an obsession with Him, surely He—All-Powerful, Omniscient, as He is—can find an easier way of having man acknowledge His greatness? Why does He not instil the belief directly rather than by adopting these circuitous and painful routes of springing His wrath by night, while the man is slumbering, and springing it in broad day, while he is disporting?

In fact, to say of such accounts of God that they are 'inadequate' is hardly appropriate. 'Blasphemous' seems more to the point. How right was Thomas Paine when, on reading what was said to have been ordained by God, he exclaimed, '...There is no authority for believing

that the inhuman and horrid butcheries of men, women, and children, told in these books [he was talking of the Bible, but the words apply to many another scripture as well] were done, as those books say they were, at the command of God. It is a duty incumbent on every true Deist, that he vindicate the moral justice of God against the calumnies of the Bible.¹²

Clearly, then, such accounts of God cannot be taken as reportage. It is hard to convince oneself that the authors have ‘seen’ God and found Him to be so singularly obsessed with our opinion of Him. The accounts make sense in only one way: they portray not God but *what it is in our conduct that we want to rationalise*, they portray *what we want our conduct to be*, that is, they show *the role-model that we are putting before ourselves*. In brief, whatever the nature of the real God, God as we know him from these Books is a product of our needs, of the environment and circumstances in which the books were written.

Consider the ‘God’ thus portrayed as *a parable for the nascent State*. The obsession with being recognised as powerful, with being supreme, with being the only one to whom the people owe allegiance, with being the only one for whom the faithful ‘kill and are killed’, as the Quran says (9.113), at once falls into place and with it the central character of the Quran, its *leitmotiv*. Is God really all that intolerant of other gods or do we make Him that intolerant so that we may in His name be as intolerant of other humans? Are the accounts of miracles necessary so that God may prove Himself to puny man or so that man believe in the Prophet-who-parts-the-sea or the Prophet-who-splits-the-moon—and in the State he establishes?

The Books thus deal with relatives, with things born of time and place, not with eternal verities. Once we have documented this for concept after concept,¹³ and once this fact percolates into the common mind, we will see that the Book, the religion that flows from it and the priest and politician who strut about in its name are not things over which we should be breaking one another’s heads.

Examine Every Cliche

‘THE TROUBLE with us Hindus,’ the Hindu says, ‘is that we are divided—Arya Samajis v. Sanatanis, Vaishnavites v. Shaivites. Look at the Muslims, on the other hand, and the Sikhs.’ ‘The trouble with us Muslims,’ the Muslim says, ‘is that we are always fighting each

other—Shias v. Sunnis v. Ahmediyas....Look at what is happening between Iraq and Iran. Just see how the Arabs have never been able to get together to fix Israel. Look at the Hindus, on the other hand, and the Sikhs—united to a man.’ ‘The trouble with us Sikhs,’ says the Sikh, ‘is that we are always at each other’s throats—Jat Sikhs v. non-Jat Sikhs, Amritdharis v. non-Amritdharis, Akalis v. non-Akalis, Sikhs in Punjab v. Sikhs outside Punjab. On the other hand, look at the Hindus, the Musalmans...’

We know more about ourselves, about our group, and so the internal differences within our group are what strike us. We know little about the other group, and so each crisis further reinforces our stereotype of it, till in the end that other group is one, undifferentiated *howwaa*, one dark, menacing, enveloping cloud.

‘The Hindus do not have a sense of history,’ says a Western publication. ‘The word in Hindi for “yesterday” and for “tomorrow” is the same, “*kal*”. But is the world the same in, say, Malayalam or Tamil or Telugu? Or is it that only those who speak Hindi are Hindus? And what about the Sikhs in Punjab or the Muslims in U.P.? Speaking Punjabi or Hindustani, they also use ‘*kal*’ to denote both ‘yesterday’ and ‘tomorrow’. Is the absence of a sense of time then confined to Hindus or does it cover them also?’

‘Hindus and Muslims can never be one. One bows to the east, the other to the west. One eats pork, the other kills cows.’ But what of the Hindus who do not eat pork, who are, say, vegetarians? Are they for that reason closer to the Muslims than those that do? And could eating beef have been so central to being a Muslim in seventh century Arabia, where cows were not all that abundant? And if such externals determine whether we will be close to one another or not, are we to conclude that the Jew and the Muslim will always be friends because both are circumcised?

‘Sikhism is closer to Islam,’ says Khushwant Singh. ‘Both are monotheistic. Both abhor idolatry.’ But the *Akal Purush* of the Granth Sahib is an *inclusive* concept, it *incorporates*, it *welcomes* others—witness the thousands and thousands of times that other Hindu deities are venerated and invoked in the Granth Sahib—while the Jehovah of the Old Testament and Allah of the Quran *exclude*, *repel* others. As for idolatry, Khushwant Singh himself notes how the Granth Sahib is now venerated, prayed to, looked after like an idol. He attributes this to ‘the influx of Hindus into the Sikh fold’. Even so, he insists on the

distinction: 'Despite these customs,' he concludes, 'the *Granth* is even today not like the idol in a Hindu temple nor the statue of the Virgin in a Catholic cathedral. It is the means and not the object of worship.'¹⁴ But that is *precisely* what the idol is supposed to be for the Hindus—an aid like a *mantra* or anything else. As for popular practice, unfortunately that is quite the same among both Sikhs and Hindus.

Cliches of this kind, stereotypes of this kind, divide us. Some fall for them and then give currency to them out of no more than slipshod scholarship, superficiality, a breezy penchant for the sweeping generalisation. In other cases—much of the writing of British scholars on Sikhism around the turn of the century is a case in point—the generalisation is set forth as part of a design. The title of the then Lt. Governor, M. Macauliffe's work tells its tale, *A Lecture on the Sikh Religion and its Advantages to the State*.¹⁵ He is candid about the impetus of the new approach:

At former [census] enumerations village Sikhs in their ignorance generally recorded themselves as Hindus, as indeed they virtually were. With the experience gained by time, a sharp line of demarcation has now been drawn between Sikhs and Hindus....

The cliches, the stereotypes were part of conscious policy by which to further imperialist interests. The Sikhs, as David Petrie, the then Assistant Director of Criminal Intelligence, put it, were 'encouraged to regard themselves as a totally distinct and separate nation.'

Whether their origin is a cavalier superficiality or design, the stereotypes do great harm. Each of them should be examined threadbare. By seeing through the cliches we will be that much better equipped to tackle the genuine differences.

What is true of differences between our traditions is equally true of what needs to be done to strengthen each tradition itself. Each of them has many strengths, each has many lacunae. But the only way to forge ahead is to identify correctly the real deficiencies. If we keep addressing problems that aren't there—or if, conditioned by thinking in stereotypes and cliches, we continue to ascribe the problems to the wrong cause—the real deficiencies will remain to plague us. A single example will have to suffice.

A Typical Generalisation

'HINDUISM IS life-denying, other-worldly, fatalist. The Hindu scriptures are fatalist through and through. The Hindus resign themselves to "fate" as they believe in the theory of Karma, in the notion that their present condition is predetermined by acts in the past. On the other hand, Islam is activist, life-affirming.' Few generalisations are as common as these.

Is the 'Hindu' peasant, sweating his guts out in the noonday sun to wrest a meal from nature, 'life-denying'? Is he concerned with the 'other-world' or with *this*? Is the 'Hindu' merchant, scurrying around like any other merchant to make a quick buck, 'life-denying'? Are his pursuits not very much of *this* world? The Gita is as close to being a scripture for the Hindus as any. It is perhaps the most commonly resorted-to text among the Hindus. What is the dialogue all about? What is Krishna asking Arjuna to do? To deny life, to go off into the forest and await summons to the other world? Is the whole and singular message not, 'Rise and fight'? And how does the dialogue end? What is the culmination? Does Arjuna trundle off to contemplate the other world? Does he not on the contrary declare, 'Destroyed is delusion...I am firm, with doubts gone.'—and then does he not fight?

Similarly, if the 'theory of Karma' has so powerful a hold on my psyche as to lead me to resign myself to my present lot, in the belief that all efforts are bound to be futile as the present is already predetermined by my deeds in the past, why does *that very 'theory'* not spur me to act today in the certain conviction that what I do today will determine my condition in the *future*? Does scripture determine life? Or does life determine the meaning I put on the scripture?

Consider the question from another point of view, that of Islamic scriptures.

The Quran, as we know, is just as full of preordination as any other scriptures. 'God's behest is a fixed decree,' we are told. (*Quran*, 33.38) 'Say,' Allah exhorts the faithful, 'Nothing can befall us but what God has destined for us.' (9.51) 'We never destroyed a city whose term was not pre-fixed,' says Allah. 'No people can forestall or retard its destiny.' (15.4, 5) 'No mischance chanceth either on earth or in your own persons,' He tells us, 'but ere we fixed them, it is in the Book [of eternal decrees].' (57.23)

Will a person die or not at a particular moment, will he heed the

message or not—every outcome is already determined by Allah's decree. Thus, for instance, we are told that even if a person fearing death, decided to refrain from *jihad* and to stay at home, 'they who were decreed to be slain would have gone forth to the places where they lie...' (3.148) The fact that they shirk *jihad* too is the result of God's decree: they do so, we are told, because 'God was averse to their marching forth, and made them laggards....' (9.40.9) As they stay behind, though it be in accordance with what Allah has decreed, evil befalls them.

From the point of view of Allah, and therefore of the Quran, the most important fact about a person is whether or not he is a believer. Everything else is secondary, everything else follows upon whether he believes or not. If the outcome of this all-important question is preordained, then preordination must be taken to be as central to the Quran as to any other scripture. Now, how is it that some come to believe the message that Allah has sent and thus ascend to Paradise, etc. and that some, in spite of the numerous signs that Allah places in their path to remind them of His greatness, fail to believe? Is this upto a person's effort, or is it preordained by Allah?

Allah bestows this favour on whomsoever he wishes, the Quran tells us again and again (3.73, 74; 5.54; 57.21; 62.4, for instance). He is the one 'who brings low and raises up.' (3.25) 'He turns astray whom He wishes,' (6.39; 12.5; 14.4; 16.93; 35.6) 'He aideth whom he will..., ' we are told. (30.4) 'Thus God misleadeth whom He will, and whom He will doth he guide aright...' (84.34; 7.167-7 is similar) 'We have placed veils over their hearts,' Allah says, 'that they may not understand, and a dullness into their ears.' (18.57) Accordingly, the Quran speaks of 'he whom God, knowingly, has sent astray, whose hearing and whose heart He has sealed, and on whose eyes He has set a blindfold...' (45.23); it speaks of 'These are they whom God hath cursed, hath cursed, and made deaf, and blinded their eyes...' (47.24, 25)

It isn't just that Allah ordains who will see the light and who will not. Once he does so, there is nothing that either they or anyone else, such as a prophet, can do to help them. So firm is the preordination.

'As to the infidels,' Allah tells the Prophet, 'alike is it to them whether thou warn them or warn them not—they will not believe: Their hearts and their ears hath God sealed up and over their eyes is a covering... Diseased are their hearts. And that disease hath God increased to them...God shall mock at them, and keep them long in their rebellion, wandering in perplexity... They are like one who kindleth a

fire, and when it hath thrown its light on all around him... God taketh away their light and leaveth them in darkness—they cannot see: Deaf, dumb, blind: Therefore they shall not retrace their steps from error...' (2.5-17) Indeed, every new revelation, far from setting them right, confirms them in their unbelief. (9.125-8) And so, 'whom God sends astray shall have neither surety nor guide.' (17.97; 18.17; 39.29,37; 7.186; 13.33) 'Had We pleased,' Allah declares, 'We had certainly given to every soul its guidance. But true shall be the word which hath gone forth from Me—I will surely fill hell with Djinn and men together.' (32.13) The decree that consigns them to ignorance is as irrevocable as the torment that must follow it is certain:

Verily, We have sent down the warning, and verily, We will be its guardian;
 And already have We sent Apostles, before thee, among the sects of the ancients;
 But never came Apostles to them whom they did not deride.
In like manner will We put it into the hearts of the sinners of Mecca to do the same:
They will not believe in him though the example of those of old hath gone before.

So final and unalterable is Allah's ordainment that

Even were We to open above them a gate in heaven, yet
 all the while they were mounting up to it,
 They would surely say: It is only that our eyes are drunken: nay,
 we are a people enchanted... (*Quran*, 15.10-15)

'Verily,' the Quran says, 'this is no other than a warning to all creatures; To him among you who willeth to walk in a straight path: *But will it ye shall not, unless as God willeth it*, the Lord of the worlds.' (81.27-9) Such is the predeterminism of the Quran. The *hadis* if anything are even more graphically and emphatically predeterminist.

Allah decrees everything that a man will do or believe, and His decrees are final; the *hadis* report the Prophet saying repeatedly, 'The pen has dried after writing what you will surely encounter.' (*Sahih al-Bukhari*, 67. Ch. 1) '...O Allah! the Prophet says, 'No one can withhold what you give, and none can give what you withhold, and the fortune of a man of means is nothing before you.' (*Bukhari*, 67.612)

Allah decrees the fortune of a man when he is still in the womb, and, do what the man may, the decreed future comes to prevail in the nick of time:

Verily your creation is in this wise. The constituents of one of you are collected for forty days in his mother's womb in the form of blood, after which it becomes a clot of blood, in another period of forty days. Then it becomes a lump of flesh and forty days later Allah sends His angel to it with instructions concerning four things, so the angel writes down his livelihood, his death, his deeds, his fortune and misfortune.

'Then his document of destiny is rolled,' the Prophet tells us, 'and there is no addition to or subtraction from it.' And whatever the creature may do or contrive, in the end what has been written will prevail: 'By Him besides whom there is no God,' says the Prophet on oath,

that one amongst you acts like the people deserving Paradise until between him and Paradise there remains but the distance of a cubit, when suddenly the writing of destiny overcomes him and he begins to act like the denizens of Hell and thus enters Hell, and another one acts in the way of the denizens of Hell, until there remains between him and Hell a distance of a cubit that the writing of destiny overcomes him and then he begins to act like the people of Paradise and enters Paradise. (*Sahih al-Bukhari*, 67.593, 603-4; *Sahih Muslim*, 6390-7)

The decree operates from the biggest to the smallest deeds, from whether or not you will acquire understanding and knowledge, to whether or not you will commit adultery. 'Verily, Allah has fixed the very portion of adultery which a man will indulge in and which he of necessity must commit,' the Prophet affirms, whether this be adultery with his tongue, his eyes or his genitals. And 'there would be no escape from it,' the Prophet stresses. The deeds as well as their outcome having been laid down in such detail, practical consequences follow immediately. Thus, for instance, illnesses must be borne patiently, as they have been ordained by Allah, as has the manner in which and the time at which they are to end. Similarly, it doesn't matter whether you do *azl* (coitus interruptus) or not, the Prophet tells his followers,

because whether a child will be conceived or not has already been ordained by Allah.¹⁶

Thus, the Quran and the *hadis* have as much predeterminism, as much fatalism in them as any other scripture.

Three Conclusions

PASSAGES AND examples of this kind can be multiplied many times over. The few that have been cited however will be enough to show how careful we must be before we let fly the sweeping generalisation. The passages illustrate two further points, and so it will pay us to stay with them awhile.

First of all, it is easy to see how the world-view that emerges from the doctrine sketched above—and we know that Islam is not the only religion that has elements of it—leads, step by inexorable step, to heartlessness and worse.

The people charge prophets with falsehood in accordance with God's decree, says the Quran. Therefore the prophet must wait patiently for the appointed time when the non-believers will see the error of their ways. He should not pine for a sign from Allah so that he may with its aid convince them; after all, 'if God pleased, He would surely bring them, one and all, to the guidance.' (6.35) 'If thou art anxious for their guidance,' Allah counsels His messenger, 'know that God will not guide him whom He would lead astray, neither shall they have any helpers.' (16.38, 39) Do not waste your breath on them, Allah counsels:

Just now is Our sentence against most of them; therefore, they shall not believe. On their necks have we placed chains which reach the chin, and forced up are their heads.

Before them have We set a barrier and behind them a barrier, and We have shrouded them in a veil, so that they shall not see. Alike is it to them if thou warn them or warn them not: they will not believe. (36.6-9)

In fact, Allah tells the Prophet, leave them to their torment, waste no grief on them:

And what has been sent down to thee from thy Lord will surely increase many of them in insolence and unbelief; *so grieve not for*

the people of the unbelievers.

(5.72)

As their unbelief, indeed their persistent, obstinate unbelief has been decreed by Allah Himself, it is but right that we should not treat the believers and the non-believers equally:

Shall he, the evil of whose deeds are so tricked out to him that he deemeth them good, be treated like him who seeth things aright? Verily, God misleadeth whom He will, and guideth whom He will.

Spend not thy soul in sighs for them: God knoweth their doings.
(35.9)

It is not enough of course to spare no thought or grief for them, to 'Leave them to their forging' (6.139), 'They demand thee to hasten the chastisement' that Allah has decreed. (22.45-6) Therefore, the Quran enjoins, when they persist in their unbelief, and, they surely will for God has decreed it, 'Kill them wherever ye shall find them and eject them from whatever place they have ejected you.' (2.186) Fight them 'and let them find in you a harshness,' (9.125) make sure that 'where-soever they are come upon they are slaughtered all.' (23.60-4) 'When you encounter the infidels,' Allah tells the Prophet and the faithful, 'strike off their heads till ye have made a great slaughter among them, and of the rest make fast the fetters...' (47.4-5)

The lesson for us is as follows. By itself, as we know, preordainment can result in heartlessness, even cruelty. And so the secularist must hunt it down. But when it is combined—as it is in Islam, though not only in Islam—with millenarianism, it inevitably does so. The secularist must then expose and fight it all the more resolutely.

Think For Yourself

THE EXAMPLES help us in yet another way. They lead us to an essential element of the secular outlook, namely, that we must think for ourselves, and not swallow the scriptures. The point will be evident from the confusions into which the predeterminism of the Quran, no less than that of other traditions and texts, lands the believer.

Recall that Allah is the author of everything, person, deed, fortune, misfortune, whatever. He creates man. He determines his growth, his

fortune, the things that will help and hinder him. (56.57-75) He is the author of every act, whatever it be: 'It is God who has created you and all that you have done.' (37.196) 'And that unto thy Lord is the term of all things. And that it is He who causeth to laugh and to weep, and that he causeth to die and maketh alive...' (53.43-55) He is the one who created the soul and 'balanced it', 'and breathed into it its wickedness and its piety.' (91.7-8)

Recall in particular that it is *Allah Himself who decides and ensures that some will not believe, that they will sin*. 'Seeth thou not,' He asks, 'that We send the Satans against the infidels to urge them to sin?' (19.86)

Recall also that *it is because of this decision of Allah that the errors, lapses, sins occur*. 'Verily,' we are told again and again, 'they against whom the decree of thy Lord is pronounced shall not believe, even though every kind of sign comes to them, till they behold the dolorous treatment...' (10.96-9) It is only because Allah has so willed that they persist in their unbelief and then suffer for it. To continue the preceding verse, 'But if thy Lord had pleased, verily all who are in the earth would have believed together. What! wilt thou compel men to become believers? No soul can believe but by the permission of God: and He shall lay His wrath on those who will not understand.'

Nor is it that evil and suffering occur without Allah's knowledge, behind His back, so to say. 'No leaf falls but He knows it,' we are told. 'There is no seed in the darkneses of the earth, no green shoot or dry but it is inscribed in the perspicuous Book.' (6.59) 'No female conceives or brings forth,' we are reminded, 'without His knowledge.' (35.11) 'He well knew you when He produced you out of the earth,' we are told, 'and when you were embryos in your mother's womb.' (53.33) Allah knows 'that which his [i.e., man's] soul suggests to him,' Allah is 'closer to him than the jugular vein. (1.16) So, he decrees everything, He knows what is happening as well as what is to happen. And he is all-powerful to make it happen or to stop it from happening.

The question naturally arises: why does the all-knowing, omnipotent, merciful God deliberately decide to mislead millions and then punish them for being misled?

Those who are cursed to suffer ask the question directly in the Quran on more than one occasion (e.g., 6.149-51; 16.35-45). They correctly say that if they are idolators then they are so by the decree of God. Why must they be made to suffer for obeying the decree of God?

The answers are evasive, contradictory, manifestly unsatisfactory. 'Even so the people before them cried lies until they tasted Our might,' Allah says in response to the query. Instead of providing an answer, Allah merely asks the believers to put down the question: 'Say: "Have you any knowledge to bring forth for us? You follow only surmise, merely conjecturing." Say: "To God belongs the argument conclusive; for had He willed, He would have guided you all....."' (6.149-50) But *that* precisely was the question: *why* did He not guide us all? When ten *Suras* later the idolators are again reported as affirming 'If God had willed we would not have served, apart from Him, anything, nor we nor our fathers, nor would we have forbidden, apart from Him, anything,' the response is the same: 'So did those before them.' The message has been sent to every nation by Him, Allah says, 'Then some of them God guided, and some were justly disposed to error.' (16.35-44) But the question is: *why was it just in their case that they should be disposed to error?*

Having affirmed again and again that everything happens because Allah has so decreed, having affirmed again and again that it is Allah who lays down the provisions of a man, his deeds and actions, his fortune and misfortune to the smallest detail, the Quran, exactly like other texts, has Allah disown the authorship of the evil that men do: *They*, that is, the men whose every deed and action has been pre-ordained by God, are the authors of the disorder for which they are justly punished, says the Quran. (2.15-17) Although, on its own showing, God has unalterably pre-fixed everything they will ever do, and what the outcome of that deed will be, it asserts that He is not the one who wrongs them, *they* wrong themselves. (16.35-8)

Suddenly, from being the author of everything, God becomes the author of good alone:

Whatever good betideth thee is from God, and whatever betideth thee of evil is from thyself; and We have sent thee to mankind as an apostle....' (4.79.81)

In one breath He is the One who initiates every deed, He is the One who determines every outcome. In the next, there is a sharp division of labour: 'Nor happeneth to you any mishap, *but it is your own handiwork*; and yet He forgiveth many things.' (42.29) 'But in the torments of hell shall the wicked remain forever: It shall not be mitigated to

them, and they shall be mute for despair therein. *For it is not We who have treated them unjustly, but it was they who were unjust to themselves.*' (43.74-6)

At one moment, God is the One who creates the soul, and 'balances it,' and breathes into it its wickedness and its piety. At the next what happens thereafter becomes the responsibility of man: 'Blessed now is he who hath kept it pure and undone is he who hath corrupted it.' (91.7-10).

This is patently self-serving. Pressed further, the 'explanations' become circular. Allah turns their hearts aside, He consigns them to unbelief and sin, we are told, '*because they are a people devoid of understanding.*' (9.128) But why have they been left without understanding? And who but Allah left them in that condition?

'Surely the worst of beasts in God's sight,' we are informed, 'are those that are deaf and dumb and do not understand. *If God had known any good in them He would have made them hear; and if He had made them hear they would have turned away, swerving aside.*' (8.20-4) But *He*, Allah, is the one who originally determined whether there would be any good in them or not. How is it that He first decrees that there should be no good in them, then, on not seeing any good in them, He blurs their vision and blocks their hearing, He deliberately misleads them, and finally punishes them for being misled. Is that *just*? Is that what we would expect to flow from Allah's *compassion*, His *mercy*?

Passage after passage is equivocal, in fact evasive. 'Verily, God will not change His gifts to man, *till they change what is in themselves.*' (13.12) But how are men to 'change what is in themselves' when God is the One who lays down what shall be in them, when He preordains every deed, and does so unalterably? The words of the very verse testify to the difficulty. Exhorting men to change what is in them, it adds the caveat, 'And when God willeth evil unto men, there is none who can turn it away'—presumably the 'none' includes the person in whom evil has been willed, the one who has been exhorted to change what is in him—'nor have they any protector beside Him.' (13.12)

'O man!' asks the Quran, 'What hath misled thee against thy generous Lord, Who hath created thee and moulded thee and shaped thee aright? In the form which pleased Him hath He fashioned thee. Even so; but ye treat the Judgement as a lie.' (82.6-9) But if He has created us and moulded us, and if He has fashioned us in the form which pleased Him, *who but He* could have misled us into distrusting the Judgement?

As usual, the *hadis* do not carry the matter any further. Everything you will do, to the smallest detail, everything that will happen to you, to the smallest detail, the Prophet affirms again and again in them, has already been decreed by God. And that decree is final, forever unalterable. If that is so, asks a companion, shall we not depend on this? Shall we not abandon deliberate effort, exertion? 'No,' says the Prophet, 'But carry on your deeds, *for everyone finds it easy to do such deeds [as will lead him to his preordained place]*. (*Sahih al-Bukhari*, 77.602; *Sahih Muslim*, 6398-405) But surely that is not a satisfactory reason: why should one do something *merely because it is easy, specially if the place preordained for one is hell and this deed, though 'easy', is bound to hasten one to that?*

The *hadis* report the Prophet recounting an argument between Moses and Adam. Moses is blaming Adam for violating God's command and thereby bringing misery on mankind. Adam asks, 'What is your opinion, how long would the Torah have been written before I was created?' 'Forty years before,' says Moses. Whereupon Adam asks, 'Did you not see these words: "Adam committed an error and he was enticed to (do so)?"' Moses acknowledges that he did see. And so Adam counters as anyone would, 'Do you then blame me for an act which Allah had ordained for me forty years before He created me?'

'This is how Adam worsted Moses in the argument,' the Prophet concludes.' (*Bukhari*, 77.611; *Muslim*, 6409-15)

I take it that by this the Prophet signals his approval of Adam's disclaimer. And yet he invariably justifies Allah's punishments, is indeed zealous in executing them himself.

There is no explanation of *why* it is that Allah decrees one thing for 'x' and another for 'y'. Caprice seems all: 'And your Lord decides *as He desires....*,' 'And your Lord decides *as He likes....*,' 'And then the Lord decides *as He likes....*,' is all that the Prophet tells us. (*Muslim*, 6393-6)

And circularities abound here as in the Quran. When an infant dies and the indomitable Aisha says that he must be destined for Paradise as he had not committed any sin, the Prophet corrects her. 'Aisha,' he says, 'peradventure, it may be otherwise for *God created for Paradise those who are fit for it while they are yet in their father's loins, and created for Hell those who are to go to Hell. He created them for Hell while they were yet in their father's loins.*' (*Muslim*, 6435-7)

Nor are the Quran and the *hadis* exceptional in the confusions to

which their accounts of predestination *vis-à-vis* free will, of an omnipotent, all-knowing, all merciful God *vis-à-vis* the persistence of evil and suffering lead. The Bible's 'answer' to the question of Job is as evasive, contradictory, inadequate, as are the 'explanations' that one may infer from the Upanishads and the Gita.

And the persistence of evil, of suffering is but one of the questions on which the scriptures, the churches, the priests, to say nothing of politicians posing as priests, fail us.

The first step to secularism, to humanism, therefore, is to think for oneself.

Conclusion

TO FASHION a fair and firm State; a State and society in which the individual is all, an individual with an inviolate sphere of autonomy that neither the State nor anyone acting in the name of religion nor any other collectivity can breach; a State and society in which we learn to look upon one another as human beings, in which the habit of partitioning our fellow-men between 'them' and 'us' is gone; a State and society in which a man of God is known not by the externals—by his appearance, by the rituals he observes, by the religious office he holds—but by the service he renders to his fellow-men; a State and society in which each of us recognises all our traditions as the common heritage of us all; a State and society in which we shed the dross in religion and perceive the unity and truth to which the mystics of all traditions have borne testimony; a State and society in which we learn, in which we examine, in which we begin to think for ourselves—fashioning such a State and society is a programme worthy of those who aspire to humanism and secularism.

The *sine qua non* for such a programme is that all of us accept a limitation on means. We must accept the right of everyone to his own opinion and belief as well as the right of everyone to influence others to adopt his opinion and belief, but simultaneously each of us must vow that he will influence others by persuasion alone or not at all.

And the hallmark of the humanist and the secularist in regard to the ideals he will pursue and the means by which he will pursue them is not 'I will be secular, I will be a humanist, only when all the 'others' also conduct themselves as secularists and humanists.' Our conduct must

be principled, *whatever* the conduct of others. 'For,' as Jesus said, 'if you love those who love you, what reward have you?'

March, 1986

Notes

1. The similarities between the Bible and the Quran have been enumerated many times over. See, for instance: Henry Preserved Smith, *The Bible and Islam*, Scribner's, New York, 1897; W. St. Clair-Tisdall, *The Sources of Islam*, translated and abridged by William Muir, T. & T. Clark, Edinburgh, 1901; Richard Bell, *The Origin of Islam in its Christian Environment*, Macmillan, London, 1926; Charles Cuttler Torrey, *The Jewish Foundation of Islam*, 1933, Ktav Publishing House, New York, 1967; Abraham I. Katsh, *Judaism in Islam*, New York University Press, 1954. So great and numerous were the similarities that the 'Israeliyat' of the revelations became a matter of serious concern and contention, of accusation and counter-accusation, even in the Prophet's time itself. Several of the notions and traditions were so obviously of Jewish origin that it was alleged that two of the informants—Kab al-Ahbar and Wahb b. Munabbih—were deliberately trying to subvert Islam by smuggling Jewish notions into it; on how the charge is handled see, C.H.A. Juynboll, *The Authenticity of the Tradition Literature*, E.J. Brill, Netherlands, 1969.
2. Sigmund Freud, *Moses and Monotheism*, 1939, Vintage Books, New York, 1967, pp. 116-17.
3. And how right Freud is when he says, '...The founding of the Mohammedan religion seems to me to be an abbreviated repetition of the Jewish one, in imitation of which it made its appearance.' *Ibid.* p. 118.
4. In the following I shall choose almost all my examples from the Bible and the Quran. I shall do so in part because the reader is more likely to be familiar with the Hindu texts than with these and will be able on his own to recall corresponding examples from the former; and in part because even though, were I to write the book today, I would write a substantially different one, I have already used material from the Upanishads, Brahma Sutras and the Gita to urge similar propositions, in *Hinduism, Essence and Consequence* (Vikas, 1979). But I shall do so primarily because I want to help break the taboo that has reigned in India for the last hundred years against a Hindu discussing Islam, or a Muslim discussing Hinduism. All the religions that prevail in India today are our common heritage. Each of us must appropriate all of them. As long as the taboo lasts we will continue to be ill-informed about each other, to talk irrationally about and at each other. Breaking it is the first step to sane, informed, rational dialogue, and a paper on *secularism* of all things seems to me to be an excellent occasion to do so.

5. One spirited enumeration of all this in the case of the Bible is of course Thomas Paine's classic *The Age of Reason*.
6. For synoptic accounts of this see the entry under 'Jesus Christ' in Hughes's *Dictionary of Islam*, under 'Isa' in *The Encyclopedia of Islam*, and in Geoffrey Parrinder, *Jesus in the Quran*, Oxford University Press, New York, 1977.
7. Vinoba, *The Essence of the Quran*, Sarva Seva Sangh Prakashan, Varanasi, 1962.
8. Bertrand Russell's *Religion and Science*, as well as White's *Warfare of Science with Theology* and Locky's *History of Rationalism in Europe*, which he often cites, recount what are in retrospect hilarious notions, but on the strength of which men were for centuries cabined, persecuted, tortured, and burnt to death.
9. On this typical question see the courageous writings of the Catholic theologian Hans Kung, for instance, his *Infalible?*, Collins, London, 1971, from which the foregoing statements are quoted, and *The Church Maintained in Truth*, Seabury Press, New York, 1980. On reading these and on reflecting upon the harassment to which scholars like Kung are subjected to this day, one realises how fortunate are those whose religion does not have a Church.
10. Bertrand Russell, 'An Outline of Intellectual Rubbish' in *Unpopular Essays*, 1950.
11. Cf. Schopenhauer, 'On Religion', in *Essays and Aphorisms*, Penguin Classics, 1981, pp. 183-5. The Old Testament and the Quran are obviously not the only scriptures which present a God with this as His singular concern. In the *Janma Saakhis*, for instance, God summons Guru Nanak often. Each time the Guru appears before Him, God orders, 'Nanaka, Meri sift kar' — 'Nanak, praise Me'.
12. Thomas Paine, *The Age of Reason*, Paris 1794; reprint Prometheus Books, New York, 1984, p. 84.
13. And God-that-is-Allah is just one example. Scores and scores of scholars have used scores and scores of different examples to draw our attention to the correspondence. Two justly famous works which argue the point from completely dissimilar perspectives deserve special mention, Marx and Engels's *The Holy Family* and Toynbee's *Study of History*. The parts in the latter relevant to our discussion are summarised in Toynbee's *An Historian's Approach to Religion*, Oxford, London, 1956.
14. Khushwant Singh, *A History of the Sikhs*, Volume 1, 1469-1839, Princeton, 1963, Appendix 2, and elsewhere.
15. Government Central Printing Office, Simla, 1903.
16. For these and other examples, see *Sahih al-Bukhari*, 67. 599, 600, 609, 612; *Sahih Muslim*, 6406-7, 6421-2.

Arun Shourie's distinctive style of rigorous analysis backed up by meticulous research has made him India's most influential commentator on current affairs. His prolific pen has engendered a host of articles and four earlier books. Among them is *Hinduism: Essence and Consequence*, a critique of the Advaita view of reality that permeates the Upanishads, the Gita and the Brahma Sutras, and of its social consequences. Arun Shourie was given the prestigious Magsaysay Award in 1982 for 'employing his pen as an effective adversary to corruption, inequality and justice', and in the same year declared 'International Editor of the Year' by the *World Press Review*.

Eight Lives: A Study of the Hindu-Muslim Encounter

by Rajmohan Gandhi

This book has grown out of the author's earnest wish to bridge the gaps that continue to divide India's Hindus and Muslims and to distance Indians from Pakistanis and Bangladeshis.

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The Governor: Sage or Saboteur

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